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ADVISORY SERVICES IN THE FIELD OF HUMAN RIGHTS */

Report by the Expert, Mr. Héctor Gros Espiell, on Guatemala, prepared in accordance with paragraph 9 of Commission resolution 1989/74

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*/ The addendum to this document (E/CN.4/1990/45/Add.1) describes in detail the activities carried out in 1988-1989 in the context of technical assistance provided by the Secretary-General to the Government of Guatemala aimed at organizing the infrastructure necessary to protect and promote human rights.

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II. Programme of assistance provided by the Centre for Human Rights to the democratic Government of Guatemala in accordance with Commission on Human Rights resolutions 1988/50 and 1989/74.

I. INTRODUCTION

1. The Commission on Human Rights has been considering the situation of human rights in Guatemala since its thirty-fifth session, in 1979, and has taken a series of decisions in this regard (see E/CN.4/1988/42, paras. 1 to 11, for a detailed summary).

2. In 1983, the Chairman of the Commission, in accordance with resolution 1983/37 adopted by the Commission at its thirty-ninth session, appointed a Special Rapporteur for Guatemala. From 1984 to 1986, the Special Rapporteur submitted annual reports to the General Assembly and the Commission on Human Rights.

3. At the end of 1985, a process of democratization began in Guatemala after many years of military dictatorship. The people freely elected a civilian Government, which assumed power on 14 January 1986 at the same time as the new Constitution of the Republic entered into force.

4. In 1986, the Commission on Human Rights adopted resolution 1986/62, in which it decided to terminate the mandate of the Special Rapporteur and requested the Chairman of the Commission at its forty-second session to appoint a special representative, who submitted a report to the Commission at its forty-third session, in 1987. After considering that report, the Commission adopted resolution 1987/53 in which it decided to terminate the mandate of the Special Representative and requested the Secretary-General to appoint an expert to formulate recommendations to the Commission for the further restoration of human rights in Guatemala.

5. In accordance with resolution 1987/53, entitled "Situation of human rights in Guatemala", the Secretary-General appointed, on 24 June 1987, Mr. Héctor Gros Espiell as the Expert with a view to "assisting the Government of Guatemala, through direct contacts, in taking the necessary action for the further restoration of human rights".

6. In his first report to the Commission on Human Rights, the Expert stated (E/CN.4/1988/42, para. 16) that he took the view that his mandate was to continue providing the Commission with his personal appraisal on respect for human rights in that country.

7. Further, with a view to taking the necessary action for the further restoration of human rights, his report was required to deal with the possibility offered to the constitutional Government of Guatemala of requesting advisory services and other forms of assistance with a view to fostering advances in democracy and strengthening respect for human rights.

8. The Commission on Human Rights, after considering the report (E/CN.4/1988/42) of the Expert, adopted, at its forty-fourth session, resolution 1988/50 entitled "Assistance to Guatemala in the field of human rights", in which it noted with satisfaction that the Government of Guatemala was prepared "to guarantee the protection of human rights and fundamental freedoms in that country". It also welcomed with satisfaction "the interest shown by the Government of Guatemala in continuing its co-operation with the Commission".

9. In the same resolution, the Commission expressed the view that the obligation to promote and protect human rights and fundamental freedoms called not only for measures to guarantee their protection, but also for measures to prevent effectively any violation of those human rights. The Commission appealed to the Government of Guatemala to accord priority to the implementation of such measures.

10. The Commission requested the Secretary-General, in the same resolution, to provide "such advisory services and appropriate forms of assistance in the field of human rights as may be requested by the constitutional Government of Guatemala, with a view to fostering advances in democracy and strengthening the institutions responsible for ensuring respect for human rights in accordance with the recommendations contained in the Expert's report in the framework of the proposals contained in the report of the Secretary-General on the question (E/CN.4/1988/40 and Add.1)".

11. The Expert submitted his second report (E/CN.4/1989/39) to the Commission on Human Rights, at its forty-fifth session, in accordance with resolution 1988/50. After considering the report, the Commission adopted, on 8 March 1989, resolution 1989/74 entitled "Assistance to Guatemala in the field of human rights". In the resolution, the Commission expressed "its serious concern at the harmful conditions that still exist and place severe limitations on any genuine process of improving the human rights situation in Guatemala" and urged "the Government of Guatemala to intensify its efforts to ensure that all its authorities and security forces fully respect the human rights and fundamental freedoms of its citizens". In the same resolution, the Commission requested the Secretary-General to continue "to provide such advisory services and other appropriate forms of assistance in the field of human rights as may be requested by the constitutional Government of Guatemala, with a view to fostering advances in democracy and strengthening the institutions responsible for ensuring respect for human rights, in accordance with the recommendations contained in the Expert's report". The Commission also decided to request the Secretary-General to renew the mandate of the Expert for one year, and it requested the Expert to submit a report to the Commission at its forty-sixth session "taking into account the situation in the country".

12. The present report covers the period from March to December 1989, although other relevant information has been included when considered appropriate. The report is based partly on the data provided by the Guatemalan authorities, although they are obviously not the only source of information. In this respect, the Expert wishes to acknowledge the extensive co-operation he received at all times from those authorities. That co-operation made it easier to discharge the mandate assigned to him. The Expert has also taken into account the relevant information received through the United Nations Centre for Human Rights, and transmitted by non-governmental organizations, in particular: American Watch, Amnesty International, the Central American Association of Families of Missing Detainees (ACAFADE), the Human Rights Commission of Guatemala, Lawyers Committee for Human Rights, the World Organization Against Torture, the Guatemalan Justice and Peace Committee, the Guatemalan Catholic Church, the National Co-ordinating Committee of Guatemalan Widows (CONAVIGUA), the Centre for Human Rights Research, Study and Promotion (CIEPRODH), the International Federation of Human Rights (FIDH), the Mutual Support Group (GAM) and the Unitary Representation of the Guatemalan Opposition.

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II. PRESENT LEGAL FRAMEWORK OF THE HUMAN RIGHTS SITUATION IN GUATEMALA

13. With respect to the applicable international law, it should be noted that, apart from the binding force of the Universal Declaration of Human Rights, as now recognized in doctrine and in international practice, under Guatemala's legislation the Declaration is given specific legal effect in internal law (art. 48 of Decree No. 54-86 of 10 October 1986, amended by Decree No. 32-87). These Decrees specify that the Procurator for Human Rights is a Commissioner of Congress for the defence of the human rights guaranteed by the Constitution, the Universal Declaration and the Treaties accepted and ratified by Guatemala.

14. It should also be noted that, in accordance with the provisions of article 46 of the Constitution, international treaties and conventions agreed and ratified by Guatemala prevail over domestic law. This constitutional principle is also embodied in article 3 of the Amparo, Habeas Corpus and Constitutionality Act (Decree No. 1-86 of the National Constituent Assembly of 8 January 1986).

15. Within the United Nations orbit, Guatemala is a party to the following human rights instruments (only those that are relevant in the light of Guatemala's experience and situation are cited):

(a) International Covenant on Economic, Social and Cultural Rights (Guatemala deposited the instrument of accession to this Covenant on 19 May 1988);

(b) Convention on the Prevention and Punishment of the Crime of Genocide;

(c) International Convention on the Elimination of All Forms of Racial Discrimination;

(d) Convention on the Elimination of All Forms of Discrimination Against Women;

(e) Convention Against Slavery and the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery;

(f) Convention and Protocol relating to the Status of Refugees;

(g) International Labour Organisation (ILO) Convention No. 87 concerning Freedom of Association and Protection of the Right to Organize, 1948, ILO Convention No. 98 concerning the Application of the Principles of the Right to Organize and to Bargain Collectively, 1949, and ILO Convention No. 111 concerning Discrimination in Respect of Employment and Occupation, 1958. Guatemala has ratified over 45 ILO Conventions.

16. In regional terms, Guatemala is a party to:

(a) The American Convention on Human Rights and has recognized the litigious jurisdiction of the Inter-American Court of Human Rights (Government Order No. 123-87, of 20 February 1987), provided for in article 62 of the Convention, although only in regard to events occurring after the declaration recognizing such jurisdiction. On 9 March 1987 Guatemala withdrew the reservation it had made on 25 May 1978, when it signed and ratified the American Convention;

(b) The Inter-American Convention to Prevent and Punish Torture. However, it entered the following reservation: "The Republic of Guatemala does not agree to the application, nor will it apply, the third paragraph of article 8 of the Inter-American Convention to Prevent and Punish Torture, for under its internal legal system, after remedies have been exhausted, a decision acquitting a person presumed to be guilty of the offence of torture is final and may not be submitted to an international forum". In the opinion of the Expert, this reservation in incompatible with the object and purpose of the Convention and at the same time is irreconcilable with Guatemala's recognition of the jurisdiction of the Inter-American Court of Human Rights. Paragraph 19 of the present report refers to this situation and to the representations made by the Expert for the withdrawal of this reservation which, however, have not been successful.

17. As far as international humanitarian law is concerned, Guatemala ratified, on 14 May 1952 the four 1949 Geneva Conventions and is also a party to the two 1977 Additional Protocols to the Geneva Conventions, which it ratified on 19 October 1987. Guatemala signed the Headquarters Agreement for the establishment in the country of an International Committee of the Red Cross (ICRC) office on 13 September 1989.

18. Guatemala's "status" vis-à-vis the human rights instruments shows, at the international and regional levels, the following deficiencies that should be remedied:

(a) Guatemala is still not a party to the United Nations International Covenant on Civil and Political Rights or the Optional Protocol thereto;

(b) Guatemala is still not a party to the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

(c) Guatemala maintains an unacceptable reservation to article 8 of the Inter-American Convention to Prevent and Punish Torture.

19. In his meetings, in the course of his mission in Guatemala from 22 October to 3 November 1989, with the Human Rights Commission of Congress and the Minister for Foreign Affairs, the Expert drew attention to these deficiencies and repeated that Guatemala should accede as soon as possible to the International Covenant on Civil and Political Rights and to the Optional Protocol thereto. In his opinion, Guatemala should also withdraw the reservation it had made to the Inter-American Convention to Prevent and Punish Torture.

20. He was informed that the instruments in question were being studied. The International Covenant on Civil and Political Rights, in particular, raised the problem of the right to self-determination (art. 1). The Expert pointed out that Guatemala was already a party to the other International Covenant which contained exactly the same article (art. 1), and he went on to say that there was no difficulty whatever from the legal viewpoint, but that there was nothing to prevent the Government from making a declaration at the time of accession if it wished to do so.

21. With regard to the applicable internal Guatemalan law, the Expert submitted an analysis to the Commission on Human Rights, in his earlier reports (E/CN.4/1988/42, paras. 24 to 28 and E/CN.4/1989/39, paras. 22 to 24), of the legislative framework adopted by Guatemala since 1985, to regulate and guarantee human rights in Guatemala, mainly: the 1985 Constitution; the Amparo, Habeas Corpus and Constitutionality Act (Decree No. 1-86 of the National Constituent Assembly); the Act on the Human Rights Commission of the Congress of the Republic and the Procurator for Human Rights and Reforms (Decrees Nos. 54-86 and 32-87). The reports also referred to the body of laws enacted or in the process of being adopted to promote economic and social development.

22. The following entities and institutions now in operation, arising out of the new Constitution or measures taken by the constitutional Government of Guatemala since 1986 to promote and protect human rights should be mentioned:

(a) The Constitutional Court, set up in April 1986, since when it has exercised the functions granted to it by the Constitution in respect of the defence of the constitutional order. It was established by articles 268-272 of the Constitution; it is fully operational and has already produced a substantial amount of case law;

(b) A new Supreme Court of Justice, comprising nine judges elected by Congress, established by articles 214-216 of the Constitution;

(c) The Human Rights Commission of Congress established by the Constitution made up of one deputy from each of the political parties represented in Congress. The Commission has drawn the attention of the Congress to the problem of enforced or involuntary disappearances, torture and extra-legal executions. On 12 September 1989, the political parties represented in the Commission, considering that the state of law had undergone "a marked deterioration since the most elementary human rights are being infringed day after day without the legal institutions established to safeguard them being able to do so", approved, with only one dissenting vote (the representative of the governmental party voting in favour) a resolution which states the following:

> "1. Deplores and strongly condemns the abductions and extra-legal executions that have plunged into mourning and affected the popular, peasant, political and trade union sectors, organizations for the defence of human rights, business circles and more recently the university student sector.

2. Urges all sectors of the population to organize itself in a front against the violence and calls on the Government to elucidate immediately these acts and to punish the culprits.

3. Calls on friendly nations who show their solidarity in again negotiating within the United Nations agencies for the appointment of an impartial Special Rapporteur with powers to investigate serious human rights violations in Guatemala, with the assurance that Guatemala will continue to enjoy the international co-operation in the economic and technical fields thus far provided for the benefit of the Guatemalan population.

4. Transmits a copy of this resolution to the diplomatic missions accredited to Guatemala and to the international human rights agencies."

(d) The Procurator for Human Rights, an independent institution established by the Constitution for the defence of human rights, took up his duties on 19 August 1987. The Office of the Procurator opened its doors to the public two months later. In December 1987, the Procurator submitted his first report to the Congress, to which the Expert referred in his previous report. The report for 1989 will be submitted in January 1990. The Expert will refer to this report in the oral presentation he will give in the Commission. The Procurator has undertaken intensive promotion and protection activities and has opened eight offices in Guatemala. The Procurator appointed in August 1987 submitted his resignation, which was accepted by the Congress on 31 October 1989;

(e) The National Reconciliation Commission, established on 11 September 1987 by the President of the Republic in conformity with the procedure agreed by the Presidents of the Central American countries with a view to establishing a stable and enduring peace in Central America (Esquipulas II). The Commission is an entity for monitoring and establishing compliance with the agreements; it is also an intermediary between the Government and the guerrilla forces with a view to achieving an effective cease-fire. On 7 November 1988, the Commission made an appeal for national dialogue, as broad and democratic as possible, to permit the most representative groups of the country to hold an exchange of views in order to find solutions leading to a fairer and more united social co-existence for Guatemalans. The Commission adopted its rules of procedure and has undertaken intensive activities. It works through 15 committees. Some 600 delegates from the Government, the Catholic Church, other churches, governmental and opposition parties, non-governmental organizations and other prominent citizens are involved in the national dialogue. It should be pointed out, however, that neither the Armed Forces, as such, the "guerrilla", the Unitary Representation of the Guatemalan Opposition (RUOG), nor the Chamber of Agricultural, Commercial, Industrial and Financial Associations (CACIF) are taking part in the dialogue;

(f) The Ad Hoc Committee for Aid to Returnees (CEAR), established by Government Order No. 765-86 of 16 October 1986 is run by a Board of Directors, composed of representatives of various ministers and chaired by the Ministry of Foreign Affairs. The Committee's primary objective is to assume responsibility for "establishing conditions which permit the gradual return of refugees". The Committee has co-operation agreements with national and

foreign entities, and in particular with the Office of the United Nations High Commissioner for Refugees (UNHCR). Between January and October 1989, 905 persons (207 families) were repatriated under the CEAR-UNHCR programme. In 1988, 1,928 persons (402 families) were repatriated. Since the programme was launched in 1987, CEAR has assisted 3,507 returnees (802 families). In 1988 and 1989, CEAR also assisted 5,519 displaced persons (5,118 in 1988 and 401 in 1989) and 983 outside the programme (73 in 1987 and 910 in 1988), making an overall total of 10,309 returnees, displaced persons or persons outside the programme who were assisted by CEAR;

(g) The Advisory Commission on Human Rights Matters to the Office of the President of the Republic, established on 19 April 1988, by Government Order No. 244-88, in order to contribute to all those activities that are designed to ensure that citizens enjoy human rights, without prejudice to the functions and jurisdiction which the law assigns to other organs of the State to secure the application of these rights. The Commission began work on 15 May 1988. In the course of 1989, the Commission sponsored activities to secure better co-ordination between the executive and judicial branches. The Commission noted that communications between the two branches had improved, as a result of that co-ordination, for the investigation of any case that constitutes a criminal offence or human rights violation; the Office of the Government Attorney provides further assistance in respect of criminal actions, automatically expediting any cases of which it has knowledge. The Commission also reported on: the activities of the Judiciary and the Supreme Court of Justice in instructing presidents of courts, judges of courts of first instance and magistrates on the procedures to be followed in remedies of habeas corpus; the Central Register of Detainees and the obligation of all police forces to report on the detention of any person; a number of cases won in the courts; and on the promotion of human rights by means of courses and the dissemination of international humanitarian law and a series of programmes implemented and supported by the Ministry of Education;

(h) The Supreme Electoral Court established by Decree No. 1-85 of the National Constituent Assembly and amended by Decrees Nos. 51-87 and 74-87 of the Congress of the Republic, in conformity with the provisions of article 223 of the Constitution. The Expert mentioned the municipal elections held on 20 April 1988 in his previous report. The Supreme Electoral Court is currently preparing the pre-electoral process for the national elections to be held in November 1990. The current complex situation in respect of candidatures for the office of President of the Republic is made more difficult by the prohibitions arising from article 186 (a) and (c), and the question has been referred to the Constitutional Court.

23. Nevertheless, the major problem is to ensure that this new legislation does not remain at the level of intent. In order to maintain a State in which the rule of law prevails, and in order to defend democracy and its future and to respect human rights, these rules and principles have to be used and effectively applied in practice and, in their dealings, the Government and all public authorities have to implement a policy, every aspect of which applies the rules and principles relating to human rights.

24. As important as the applicable law is its actual influence as far as human rights are concerned. It is not enough to have appropriate legal rules and governmental implementing organs. The Government must have the firm political will to act in a thorough manner and to possess the real and effective capability to guarantee the enjoyment of human rights. It is not enough that the Government does not directly infringe human rights; it must prevent them from being infringed; it must use all the constitutional power at its command to prevent such violations and to have in hand the capability needed to guarantee peace and security in practice. And it has not managed to do this.

25. In addition to this fundamental shortcoming, there is the failure to introduce major changes in the negative material conditions in the economic and social fields and the survival of a society based on a culture of violence incompatible with harmoniously balanced right and duties for all. A human rights culture does not exist and despite the limited efforts of the Government, which is democratic, conditioned and powerless, the situation of human rights, apart from that of legislation, has not made notable progress. The Expert will address this situation, the partial but undeniable results achieved in the last few years, and the deterioration in recent months in this report.

III. VISITS TO GUATEMALA: MEETINGS AND ACTIVITIES

26. In order to make direct contact with the Guatemalan authorities and to assess the situation regarding human rights, in conformity with the mandate given by the Commission, the Expert carried out two missions in the course of 1989, the second of them with an official of the United Nations Centre for Human Rights. The first visit took place in May, followed by a second visit from 22 October to 3 November 1989.

27. During these visits, the Expert had meetings, at the official level, with Mr. Vinicio Cerezo Arévalo, the President of the Republic, General Héctor A. Gramajo, the Minister of Defence, Mr. Mario Palencia and Mr. Ariel Rivera, the successive Ministers for Foreign Affairs, Mr. Roberto Valle Valdizán and Mr. Carlos Morales Villator, the Ministers for the Interior, Mr. Julio Martini, the Deputy Minister for Foreign Affairs, Mr. Edmundo Vásquez, the President of the Supreme Court of Justice and the Judiciary, Mr. Gonzalo Menéndez de la Riva, the Procurator for Human Rights, the Human Rights Commission of Congress, the National Reconciliation Commission (as well as members of the Human Rights Commission in the national dialogue) and Mrs. Carmen Rosa de León Escribano, the Chairwoman of the Ad hoc Committee for Aid to Returnees (CEAR).

28. He also met the Metropolitan Archbishop, Monsignor Próspero Penados del Barrio, and had meetings with human rights promotion, defence and protection organizations, and trade union organizations of Guatemalan workers, particularly with Mrs. Nineth de Garcia of the Mutual Support Group (GAM), representatives of the Federation of Rural Workers (CTC), representatives of the Guatemalan United Nations Association and Mr. Factor Méndez, the Director of the Centre for Human Rights Research, Study and Promotion (CIEPRODH).

29. In his previous report, the Commissioner alluded to a massacre perpetrated in November 1988 in which 21 peasants from the village of El Aguacate, in the administrative area of the municipality of San Andrés Itzapa, Department of Chimaltenango, were murdered (para. 32). During his visit to Guatemala in May 1989, the Expert collected considerable information from military and legal sources about that occurrence. It is not for him to make a detailed analysis nor is it within his mandate to attribute responsibilities. However, it should be pointed out that the confused and contradictory information does not provide evidence to show that those acts were the work of the "guerrilla", the Revolutionary Organization of the People in Arms (ORPA) as was stated in the communiqué published by the Secretariat for Public Relations of the Office of the President of the Republic on 27 November 1988.

30. The El Aguacate affair, which reflects the confused situation prevailing in Guatemala, has been studied by the Expert who had access to documentation produced by a variety of sources, governmental and non-governmental. It is not his function to identify those directly responsible, an undertaking which in any case would be quite impossible on the basis of the documentation at his disposal. However, he notes that it is an obvious example of the prevailing insecurity, the absence of guarantees and of how the right to life is at the mercy of those who feel like infringing it, without the public authorities being able to comply with their obligations in that regard. An independent and objective investigation of this case would be very worthwhile and the decision of the Inter-American Commission on Human Rights to undertake it and that of the Government of Guatemala to authorize the Commission's visit and to co-operate with it should be applauded. This initiative by the Inter-American Commission on Human Rights should be welcomed by the United Nations, in the view of the Expert, as an instance of the co-operation necessary at all times between universalism and regionalism for the protection and international promotion of human rights.

IV. PRESENT SITUATION OF HUMAN RIGHTS IN GUATEMALA

31. In his first two reports, the Expert indicated that the present constitutional Government of Guatemala has strengthened and developed the internal legal framework in order to secure the effective application of human rights and has adopted, since it was elected, a series of forward-looking legislative and administrative measures designed to strengthen the process of democratization in Guatemala. In this report, which covers the period from March to December 1989, the Expert wishes to stress the existence of gaps which the Government will have to fill. It would also need to assure improved operations and better co-ordination among the various organs responsible for the promotion and protection of human rights. He also wishes to point out that the real situation of human rights, although within the framework of a State in which the rule of law prevails, is basically determined by factors, conditions and situations that have harmful repercussions on the enjoyment of economic, social and cultural rights, as well as on the process of the consolidation of democracy in Guatemala, and which will have to be overcome.

32. Guatemala has a territory of 108,899 km and a population of more than 8 million inhabitants over 80 per cent of whom live in rural areas. According to different sources, the indigenous population ranges between 41 per cent and 65 per cent of the total population. More than 45 per cent of the population, indigenous and non-indigenous, is under 15 years of age.

The level of education is very low: only 1.6 per cent of the population goes on to university studies, 9.4 per cent to secondary education and more than 42 per cent of the population aged seven or over receives no education. Over half the population lives in dwellings that lack the most basic facilities. It is estimated that 85 per cent of the population lives in poverty, and that poverty affects the indigenous population in particular. Average life expectancy is the lowest in Central America (61 years). The infant mortality rate exceeds 60 per 1,000, one of the highest in the world. Unemployment affects more than 46 per cent of the adult population. 1/

33. The serious shortcoming in the enjoyment of economic, social and cultural rights produces situations conducive to violations of the civil and political rights of the Guatemalan people. The situation in Guatemala is shaped by the convulsions within society originating in the underdevelopment that keeps the country in an unjust social and economic structure. This structure shows major inequalities and continues to be determined by the heritage of the past, aggravated in part by the imbalances caused by the process of modernization on which the country is embarking. The crucial problem is that of the indigenous populations, traditionally discriminated against and disadvantaged, and having no genuine role in national life. In addition to this problem, there are the shortcomings in education, health and housing (the infant mortality and illiteracy rate are the highest in Central America and life expectancy is one of the lowest). These are all different facets of one and the same problem, namely, the de facto inequality which the indigenous populations of Guatemala, like other ethnic populations in Latin America, experience. A human rights policy needs to be implemented that rejects any form of discrimination on account of ethnic origin, because until this discrimination is eliminated, human rights cannot be applied fully. At the same time, the democratic process needs to continue in order to secure respect for human rights, since there can be no enjoyment of human rights without democracy, but neither can there be democracy without human rights.

34. With regard to the problem of refugees and displaced persons, it is estimated that at the present time there are some 35,000 Guatemalan refugees in the camps administered by the Office of the United Nations Commissioner for Refugees (UNHCR) in Mexico. Apart from these refugees, there are thought to be approximately 500,000 displaced persons who frequently swell the ranks of the inhabitants of the impoverished fringes of the capital, veritable breeding grounds for crime.

35. The number of returnees, as stated above in paragraph 22 (f), which had increased since the beginning of 1988 decreased noticeably in the course of 1989. One of the major problems confronting the refugees returning to Guatemala is that of land occupation for those who go back to their places of origin, but there is also the problem raised by the refugees who go to places other than those where they had lived previously.

36. The Conference of Evangelical Churches of Guatemala has proposed to the national dialogue that the right of displaced persons and refugees to possession of the lands that legitimately belong to them should be acknowledged. Similarly, the Standing Assembly of Christian Groups proposed, in a report to the Human Rights Commission on the national dialogue, the formation of a committee to inspect in situ the combat areas in order to assess the human rights situation in respect of the displaced persons arrested

by the army in Ixil and Alta Verapaz. The National Council of Displaced Persons of Guatemala (CONADEG) was formed recently; its objectives are the right to organize freely; to secure the return of its members to their communities or places of origin; and to recover their land and join the mainstream of national productive life.

37. The International Conference on Central American Refugees convened by the Central American Governments and Mexico and organized by UNHCR took place in Guatemala from 29 to 31 May 1989. The Conference played a very important role in helping to resolve the painful problem of refugees and displaced persons which affects the region so seriously and which, in the case of Guatemala, has very serious repercussions. The return of the Guatemalan refugees, their free and voluntary repatriation and their resettlement is an issue bound up with human rights which the Government of Guatemala, through the CEAR has faced up to positively, but on which much still remains to be done. The Conference adopted a Declaration and Concerted Plan of Action in Favour of Central American Refugees, Returnees and Displaced Persons (document CIREFCA/89/14).

38. The document adopted by the Conference points out that some 2 million Central Americans have been uprooted in the region as a result of the crisis which has prevailed for the last decade. There are almost 150,000 assisted refugees and it is estimated that, apart from this number, displacement is a phenomenon affecting 1.8 million people in the countries of the region, either because they were compelled to cross an international boundary or because they left their homes while remaining in their own country.

39. The Governments of the States represented at the Conference recognized that "solutions to the problems of refugees, returnees and displaced persons form an integral part of the efforts for peace, democracy and development taking place in the region" and they approved a Concerted Plan of Action in Favour of Central American Refugees, Returnees and Displaced Persons, with mechanisms for follow-up and promotion, which they consider a promising initial framework for future activities and thus reaffirm "their commitment to contribute to the establishment of a firm and lasting peace in Central America".

40. In his previous report, in order to promote an understanding of the economic and social rights situation in Guatemala, the Expert quoted from the Collective Pastoral Letter of the Guatemalan Bishops, "The Clamour for the Land" of February 1988, which analyses the issue of the marginalization of and discrimination against the peasant and the indigenous communities. The document is so important that the Expert decided to include in this report the paragraphs reproduced at that time. The Bishops speak of the social injustice and the very structure of society:

> "... Society is organized in disregard of the vast majority of Guatemalans and for the benefit of a minority.
>
> "... The minimum legal wage of Q.4.50 is obviously not enough today, in view of the high cost of living.

"... The attitude adopted by some towards the peasants is so harsh that in order to increase their profits, they are gradually uprooting the 'mozo colono'. This kind of pre-capitalist, outdated and paternalistic concept, although unsatisfactory, gives the peasant who for generations has lived on a particular farm, a certain status which in turn gives him a measure of stability and some sort of right to work on that farm and even to cultivate certain plots of land for profit.

"... It is easier and less complicated to bring in work gangs at harvest time every year under a system which is hastening the impoverishment of the peasants.

"... The peasant's condition is made worse because of the difficulty of obtaining a title deed to the land he has worked for a long time. Often this land ends up in the possession of landholders who are economically and legally better equipped to obtain the legal title deeds. We note that much of the tension in the rural areas derives from the fact that when these persons acquire such estates unfairly but legally, in their zeal to throw the peasant off the land, they enlist the support of the forces of law and order who respond to their appeal for the defence of private ownership denied to those who were, in fact, the true owners even though not recognized as such by a law, which was enacted in effect behind the backs of the people for the benefit of a privileged class. It is a painful truth that there is no proper legislation to protect the peasant against these and other abuses."

41. The Guatemalan Bishops observe that with each day the peasants are becoming "increasingly aware of their rights and their dignity", that this is an irreversible step forward and that "despite the continual and brutal repression directed against them, there is a legitimate outcry and measures are being taken in defence of the land", but they also fear that "if the aspirations cannot be channelled fairly and if no machinery is established to give them a speedy and effective response, there may well be an outbreak of violence with unforeseeable consequences".

42. The economic difficulties and the high rate of unemployment experienced by Guatemala in 1989 weighed particularly heavily on the poorest sections of the population. As Monsignor Próspero Penados del Barrio indicated, poverty has been building up much frustration within the community. As in previous years, peasants organized to claim the right to work the land have occupied estates in various parts of the country. Similarly, peasants have gone on strike in order to secure fairer wages and pay increases. The strike in the cotton, coffee and sugar-cane plantations on the southern coast which mobilized some 50,000 workers who were calling for a wage increase estimated at Q.3.20 (approximately $US 1.15) was particularly noteworthy. In the course of 1989 numerous strikes occurred not only in rural areas but also in State-run enterprises. Schoolteachers went on strike for about three months. At the same time, Post Office employees also went on strike because of pay disputes.

43. With regard to employment issues, whether in rural areas or in towns, many of the complaints and communications sent to the Expert allege violations of trade union rights, in particular, the right to organize and to form trade

unions. According to these allegations, when this happens, the employer dismisses the workers and in some cases the workers are threatened with death by unidentified persons presumably acting on the orders of the employer.

44. Numerous communications have also been received in which peasants allege that they have been threatened because, for purely economic reasons (working on a plot of land or migrating to do seasonal work in other regions), they are unwilling to take part in the "voluntary" Civilian Self-Defence Patrols (PAC).

45. In a report to the Commission on the national dialogue, the Standing Assembly of Christian Groups, basing itself on a very large number of testimonies by church members who worked in rural areas, called into question the "voluntary nature" of the participation by peasants in the PAC and took the view that substantive debate was needed in the national dialogue as well as on-the-spot inspection and monitoring. The members of the Ethnic Communities Council "Runujel Junam" (CERJ) who advocated the dissolution of the Civilian Self-Defence Patrols have been subjected to particularly persistent harassment and threats. The organization has reported the disappearance of a number of its members. Following the incident that occurred in August in the municipality of San Cristóbal (Alta Verapaz) in which the army mistook civilian patrollers associated with the PAC for insurgents and which resulted in the deaths of nine peasants and injury to three others, Guatemalan political leaders have once again begun to reiterate the demand that the Government should dissolve the PAC.

46. Apart from the massacre at El Aguacate which is mentioned in the report (paras. 29 to 30) and which has had world-wide repercussions, indiscriminate collective executions occurred in May in Sanquin de Patzicia (Chimaltenango) in which five people were killed; and in the village of El Jocotillo (Department of Guatemala) in which five people died and another was wounded; and in June in La Libertad (El Peten) when four peasants and one child died. The number of extra-legal executions which had been considerable in 1988, although not as many as in previous years appears to have reverted to numbers approaching, although still lower than, those of the past. The number of cases of enforced or involuntary disappearances was also considerable. In a large proportion of cases of disappearance, after a few days the victims are discovered dead usually showing marks of torture. These violations are directed mainly against peasants and members of popular organizations, although they have also occurred in respect of other social strata. Without undertaking a survey and detailed analysis of all the cases, attention should be drawn to the disappearance of 11 student leaders of the Association of the University Students (AEU) in August, the bodies of 5 of whom were discovered showing signs of torture. Students working with the Mutual Support Group (GAM) also disappeared in August. These deaths and disappearances followed the threats made by "death squads" (El Jaguar justiciero, La Dolorosa and El Ejercito Secreto Anticomunista) and received by many students. The most fundamental rights of Guatemalans are thus violated with impunity in a diabolic sequence that begins with enforced disappearance, continues with torture and concludes with the annihilation of the individual by summary and arbitrary execution.

47. Further, a number of peasants who were members of the Mutual Support Group (GAM) and the Ethnic Communities Council "Runujel Junam" (CERJ) were kidnapped and found dead some days later showing marks of torture. These

organizations as well as the National Co-ordinating Committee of Guatemalan Widows (CONAVIGUA) have been subjected to unceasing threats and intimidation. A bomb explosion partially destroyed the premises of GAM in Guatemala City where members of the International Peace Brigades were meeting. Following these and other violations such as the death of the former Guatemalan ambassador in Spain, Danilo Barillas and the businessman, Ramiro Castillo Love, the Chairman of the Banco Industrial, both of whom had progressive leanings, many people, including a large number of students, had to leave the country.

48. Habeas corpus proceedings are either inapplicable or inoperative in most cases. On the rare occasions when an investigation is attempted in order to be able to apply the law, the pressure is so great and the impunity of those who violate human rights is so great that the investigations have to be abandoned without the guilt of the presumed culprits being established. That was what happened to the magistrate Aníbal Trejo Duque who was abducted while investigating the "Panel Blanca" and to his assistant who was executed extra-legally, as well as to the lawyer Irma Esquival de Lara, also executed extra-legally.

49. The killings and violent deaths, that continue to occur in very large numbers, reflect the situation of uncontrolled violence and show that the law enforcement authorities, particularly the police, are failing to provide protection for citizens. Effective investigations are not being conducted of the crimes committed, the information needed to institute proceedings is not reaching the judicial authorities and the judicial apparatus is not functioning properly. In general, public opinion has no confidence in the police or in the criminal justice system. However, it should be noted that the Judiciary informed, by Circular No. 302-89, of 27 July 1989, presidents of courts, judges of courts of first instance and magistrates of the procedures to be followed in inquiries to establish responsibilities in habeas corpus proceedings, in accordance with the Amparo, habeas corpus and Constitutionality Act.

50. The Government has unquestionably endeavoured to rectify the shortcomings of the police. A process of reform and improvement has been undertaken. The efforts to provide the police with adequate means, to increase its numbers, to improve its training and the establishment of a Police College (opened in October 1989) are steps in the right direction. Some successes, such as the solution of Mr. Ramiro Castillo Love's murder, carried out within the framework of the law, after an arduous investigation, may be regarded as positive signs in the midst of a negative and critical situation.

51. The Expert referred to the problem of the traffic in children in paragraphs 50 to 54 of his previous report. He now draws attention to these paragraphs, pointing out that he has received no new information apart from the reports concerning the enforced recruitment of minors for military service, communicated by the Sub-Commission on Prevention of Discrimination and Protection of Minorities Working Group on Contemporary Forms of Slavery (E/CN.4/2/1989/39).

52. The present Government has taken steps to reduce the violence and human rights violations in Guatemala. The police is being reorganized so that it will act in accordance with the law and so that there will be improved supervision of the forces of law and order within the country. Nevertheless,

much remains to be done, especially on the matter of disappearances and extra-legal, summary and arbitrary executions. The setting up of a Police College, the introduction of instruction on human rights to members of the police and other measures adopted recently may yield meaningful results.

53. In his previous report, the Expert alluded to the attempted coup d'état on 11 May 1988 and its negative effects. There was a further attempted coup in May 1989. In October 1989, the ordinary system of justice sentenced two former members of the military implicated in the attempted coup and in November 1989 a military court passed sentence on the military personnel involved.

54. The incorporation of the armed forces in the democratic process and the recognition that they must be an instrument of the civil constitutional authority and should act only in accordance with the Constitution, to achieve the specific objectives laid down by the law in force are essential for the existence and continuity of democracy and for the enjoyment of human rights.

55. The teaching of international humanitarian law and human rights law has already begun and it must continue and spread, underlying all professional education and military training.

56. The establishment of the Strategic Studies Centre for National Stability (ESTNA), the inclusion of democratic thinking in military theory, the "national stability" based on new ideas which can unseat the outdated and mistaken ones of the past, may mark the beginning of an extremey difficult yet necessary process of change. The views expressed by Juan José Arévalo, in his inaugural address at the Strategic Studies Centre for National Stability (ESTNA), on 24 October 1989 hold out hope for the future.

57. It would seem that the continued violence, combined with the impunity enjoyed by many murders and disappearances in the absence of investigations or trials, and the lack of protection for citizens enable various anti-democratic elements, involving political and private violence, common crimes and political ones, economic repression and action by groups - which some think are "paramilitary" groups - to continue their activities and commit human rights violations. It should be pointed out that the Sub-Commission on Prevention of Discrimination and Protection of Minorities, disturbed by the information concerning numerous murders and disappearances, adopted, at its fortieth session, resolution 1988/14, which inter alia "urges the Government of Guatemala to intensify its efforts to ensure that all its authorities and security forces fully respect the human rights and fundamental freedoms of its citizens". The Sub-Commission also recommended that the Expert on Guatemala should "give particular attention to the obstacles encountered as a consequence of non-co-operation by certain elements of the military and security forces, and that he indicate ways in which this can be remedied through advisory services and other forms of assistance". In 1989, the Sub-Commission reverted to this question in its resolution 1989/7 entitled "The Human Rights Situation in Guatemala". In that resolution, the Sub-Commission recommended that the Expert "give particular attention to the existing obstacles in Guatemala to the full realization of human rights, and indicate ways in which this situation may be resolved".

58. The Expert wishes to state that: (a) an improvement in the short-, medium- and long-term of the situation of human rights in Guatemala is linked to the implementation of the Constitution and the maintenance and consolidation of the democratic process. That process should be reinforced and strengthened so that the present democratic régime may complete its mandate and that free elections may be held in 1990. There can, therefore, be no violations of human rights by State officials; (b) in the expert's opinion and although there are views to the contrary, the Government of Guatemala is not directly implicated in a policy of human rights violations. While this in itself is highly important, it is not enough, since no Government can feel satisfied if it merely refrains from directly violating human rights. It is also necessary, indeed indispensable, to have a positive policy to prevent human rights violations from occurring - that policy should guarantee the full enjoyment of all rights for all citizens. It should be noted that the Government has not done everything it could have done to control the serious human rights violations which took place in 1989. Those violations escaped the vigilance of the Government, which may mean that the latter has not succeeded in pursuing an effective policy in this area; (c) it is therefore necessary to work out a comprehensive short-, medium- and long-term policy to put an end to the violence and to democratize Guatemalan society on a basis of tolerance and to that end, a human rights culture has to be established; (d) the Government should wield its full institutional authority and show resolute political will, which it has not fully done so far, in order to secure and safeguard human rights fully.

59. This firm and positive political will has not been exercised with the requisite determination. Something has been done, despite the obvious limitations and obstacles, but the question of human rights has not been given the necessary priority that it should be accorded. The opportunities for action which existed when the Government took office were not grasped or turned to good account at the right time and in the right way. As a result, there has not been notable progress and some ground has even been lost during this Government's term of office.

60. Nevertheless, the democratic Government has embarked upon a path which can only be pursued by another constitutional and freely elected Government.

61. The guerrilla is still in existence. The Expert heard contradictory information about its importance, significance and size. However, there is no denying its existence and its impact on the situation in the country. The guerrilla has no part in the national dialogue and is not a member of the National Reconciliation Commission. The meeting in San José (Costa Rica) between the National Reconciliation Commission and the Guatemalan National Revolutionary United Front (URNG) in accordance with the procedure established in the Esquipulas II Agreement procedures, on 24 and 25 August 1988, following up the Madrid meeting of October 1987, yielded no positive and continuing results. There were no officially announced meetings in 1989.

62. The growing influence of factors stemming from the production, traffic and use of drugs has had a significant role in the deterioration of the human rights situation in 1989. The drug trade, the infiltration by drug traffickers, their links with the various types of crime and their impact on the mounting corruption which is being experienced in the country and is undermining the people's confidence, are extremely serious negative factors in the current human rights situation in Guatemala.

63. The expert is of the view that the activities pursued in 1988 and 1989 under the United Nations Centre for Human Rights technical co-operation project in the field of human rights are on the right track because they seek to encourage a human rights culture, non-existent in Guatemala, and to change attitudes. The project is encouraging co-ordination on human rights issues at the national level among the different ministries and institutions responsible for human rights, in addition to providing advisory and training services for Guatemalan officials, particularly law enforcement officials and officers of the armed forces. Those activities are rightly being directed towards trying to remove obstacles which may derive from the lack of co-operation of some elements of the military and security forces. Nevertheless, if this assistance and advice are to be effective, due priority must be given to the issue of human rights and all the institutions and mechanisms established by the constitutional Government at the national level to protect human rights must work well: all the laws and decrees on human rights must be clearly stated and put into effect. It is also necessary to be able to rely on the full support at the national level of a co-ordinating body which is not confined exclusively to activities promoted from outside, but which enjoys the political support of the Government and of all the institutions responsible for human rights and has a continuous and organic character so that it can plan and co-operate on a continuing basis, on the one hand with the national, governmental and non-governmental institutions and on the other, with international bodies such as the United Nations Centre for Human Rights.

64. In his previous report, the Expert listed some of the legal, national and international measures that the Government of Guatemala had pledged to adopt. Some of these have been adopted and others are in the process of being adopted. The situation today is as follows:

(a) National level

(i) Adoption of the bill on the possession of weapons (the bill has been passed and already there are a number of draft amendments to some of its articles); however, what is important is that it should be implemented;

(ii) Adoption of the bill on the adoption of children (this bill was passed in first reading in the Congress);

(iii) Compilation of all regional and international instruments relating to human rights to which Guatemala is a party (this is being done);

(b) Measures not yet taken at the regional and international levels

The following have not yet been done:

(i) Accession to the International Covenant on Civil and Political Rights;

(ii) Accession to the Optional Protocol to the International Covenant on Civil and Political Rights;

(iii) Accession to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

(iv) The withdrawal of Guatemala's reservation on article 8 of the Inter-American Convention to Prevent and Punish Torture;

(v) Ratification of the Additional Protocol to the American Convention on Human Rights relating to Economic, Social and Cultural Rights;

(c) Measures taken

(i) Accession to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

(ii) Signing of the Headquarters Agreement between the Government of Guatemala and the International Committee of the Red Cross (ICRC).

V. ASSISTANCE TO THE GOVERNMENT OF GUATEMALA IN THE FIELD OF HUMAN RIGHTS

65. In accordance with paragraph 7 of Commission on Human Rights resolution 1988/50, which requests the Secretary-General to "provide such advisory services and other appropriate forms of assistance in the field of human rights as may be requested by the constitutional Government of Guatemala" and as a result of the request made by the Guatemalan authorities to the Centre for Human Rights in June 1988, a technical assistance programme to Guatemala on human rights questions was carried out in 1988 and 1989. The programme has been financed in its entirety ($US 222,000) by the United Nations Voluntary Fund for Advisory Services and Technical Assistance in the Field of Human Rights. The Centre has received logistical support and co-operation from the Office of the United Nations Development Programme in Guatemala. The main aim of the programme, in the long term, was to provide timely assistance to the Government of Guatemala in taking the necessary measures with a view to fostering advances in democracy for the further restoration and strengthening of respect for human rights. The aim of the programme in the shorter term was to train persons who play a key role in various disciplines through courses and fellowships, with the expectation that this training will have a multiplier effect. By providing experts and useful material to the institutions responsible for protecting and promoting human rights in Guatemala, the programme has assisted the Government in organizing the infrastructure required to meet international human rights standards. The addendum to this document (E/CN.4/1990/45/Add.1) describes the activities undertaken under the programme of technical assistance to the Government of Guatemala.

VI. CONCLUSIONS

66. The general conclusions from the study of the human rights situation in Guatemala may be enumerated as follows:

(a) The development and progress in the legal framework for recognizing, guaranteeing and protecting human rights in Guatemala are undeniable;

(b) The Government's political will to ensure respect for these rights is definite. In the view of the Expert, its efforts in this regard cannot be doubted. But it lacked the firm and unrelenting determination to carry out a

human rights policy at the proper time and, most important, at present it has no possibility to act with all the constitutional and political authority that is needed to achieve the desired goals;

(c) Virtually nothing has been done either by the Government or by the judiciary to investigate and punish earlier human rights violations;

(d) Major de facto harmful conditions still exist and place severe limitations on any genuine process of improving the human rights situation in Guatemala;

(e) A climate of social violence continues to exist. What is more, it has grown and become worse. A human rights culture will have to be developed in which tolerance takes the place of the present contempt for pluralism and opposing views among many sections of the population;

(f) Violations of civil and political rights, especially deaths and disappearances, are still taking place and have increased in number. These are apparently the outcome not of government orders on policy but of factors, of acts committed by power circles and a persistent climate of violence that are still beyond effective government control. The Government has proved powerless and incapable of remedying this situation. Its scope for action has lessened as the violence and violations have increased;

(g) It is necessary to make sure that people are not compelled to join civilian self-defence patrols and do not suffer reprisals for not doing so;

(h) Serious deficiencies remain in the situation regarding respect for economic, social and cultural rights. Society as a whole is still conditioned by injustice and discrimination;

(i) The situation of the indigenous populations continues to be a crucial problem. The habitual discrimination and exploitation of these populations has been a constant source of human rights violations. The Government is aware of this difficult problem and an examination and comprehensive plan of the political, economic, social and cultural aspects of the question is under way (see the conclusions of consultant Willemsen Diaz, especially on the legislation which is being drafted);

(j) If the democratic process grows stronger and takes root and if it is maintained without any institutional breakdowns, the slow process of improvement initiated by the constitutional Government can be expected to continue;

(k) For this to happen, aside from the essential political will and the commitment that the Guatemalan people and their freely elected authorities alone can provide, continued international assistance and support are required;

(l) The dialogue for national reconciliation should be encouraged whole-heartedly and there should be no unjustified exclusions from it. The Government should participate actively, demonstrating total political will in continuing this dialogue;

(m) The technical capability and efficiency of the police should be upgraded in accordance with the conclusions of the report by the consultant, J. Maier;

(n) The operation of the Judiciary should be improved as recommended by the consultant, J. Maier, in his conclusions;

(o) The Procurator for Human Rights should be given greater support to enable him to continue, extend and complete the work he has begun. (In this connection, see the conclusions of the experts from the Parliamentary High Commissioner of Spain);

(p) More emphasis should be placed on training in civics and democracy, in an atmosphere of respect for human rights, for senior officers of the armed forces;

(q) The total subordination in matters of jurisdiction of members of the armed forces to the ordinary system of justice should be studied;

(r) With reference to the problem of refugees (paras. 34-39), since repatriation depends on political, economic, and social conditions and the level of violence, efforts must be continued to encourage, freely the speeding up of the repatriation process which has experienced some vicissitudes.

67. These conclusions coincide in general with those the Expert put forward in his previous reports to the Commission. Political difficulties, the continuing climate of violence and the influence of the negative factors referred to above have prevented the Government, in its weakened state, from ensuring full safeguards and respect for human rights.

68. Events have not justified the relative and cautious optimism felt in 1987 and 1988. This is serious, disturbing and unfortunate.

69. International assistance and co-operation are essential if this process is to continue, through the application of the provisions of the international instruments ratified by Guatemala and through the promotion of human rights in the manner indicated in paragraph 71 (c) and (d).

70. Only in a pluralistic and representative democracy, with a fully operative Constitution, with free elections and with everyone subject to a single and legitimate civil authority, can the future be contemplated and can there be an improvement in the human rights situation in Guatemala. The present constitutional Government, notwithstanding its shortcomings and omissions should, therefore, be supported, as should future democratic Governments.

VII. RECOMMENDATIONS

71. The recommendations the Expert ventures to make to the Commission, in keeping with his mandate under resolution 1987/53 and the terms of resolutions 1988/50 and 1989/74, are as follows:

(a) It is necessary for the Commission to continue to observe the situation of human rights in whatever way it deems appropriate, bearing in mind the present situation in Guatemala;

(b) Conclusions (1) to (p) should be borne in mind;

(c) It is essential to continue the broad programme of assistance to the Government to help the democratic process, since this institutional framework is a necessary but not the only prerequisite for the future improvement of the situation which is undeniably tied in with the maintenance of democracy;

(d) In keeping with what has already been done, this programme should, inter alia, continue to consist of:

(i) Assistance to introduce human rights courses at all levels of education. This should include not only State education but also education in private schools, colleges and universities;

(ii) Assistance for courses and seminars intended for judges and officials of the Judiciary;

(iii) Assistance for courses and seminars intended for police officials. It must be ensured that human rights are included as a subject in the continuous training of senior police officials;

(iv) Assistance for courses and seminars intended for officers in the armed forces. Human rights must be included at all times as a subject in the courses in the Military College and in the courses for officers on the General Staff. Such courses should not be confined to international humanitarian law but should cover the overall topic of human rights.

72. Without prejudice to these specific recommendations, the Expert would also like to draw the attention to the value of:

(a) Continuing to provide suitable advice and assistance for the organization and activities of the Office of the Procurator for Human Rights;

(b) Continuing to provide multidisciplinary and sectoral support to help in devising an overall policy on development, assistance and non-discrimination in regard to the indigenous populations;

(c) Supporting and complementing bilateral aid, already negotiated and in the process of being furnished, for technical reform and material improvement of the police force, so that it will become an effective democratic organization protecting and guaranteeing law and order and everyone's rights and freedoms.

73. These are the recommendations that the Expert wishes to make in his third and final report.

VIII. CONCLUDING REMARKS

74. In the course of monitoring the situation in Guatemala for almost four years, the Expert has ascertained that extensive sections of Guatemalan society have begun to understand the problem of human rights, its conception and the limitations and obligations involved. Previously, it was a problem

that did not impinge on the social conscience, one which was alien to a "culture", that had other components. But today, the start of a process of change can be glimpsed. It is a difficult and complex process and cannot be expected to come about automatically or rapidly. However, it is the only one that can bring about a legal situation, in the context of which the present and future democratic governments can work more effectively and efficiently than they have been able to do so far. This beginning of a change in thinking and a new awareness of the need to respect human rights - seen as deriving directly from the dignity of all human beings without any kind of discrimination - is perhaps the most important progress achieved in Guatemala in recent years and gives some ground for optimism about the future. Human rights violations are not confined to the Government or public officials acting in an official capacity. Human rights are also violated by terrorists and the guerrilla - especially in a democratic State, which, because it is pluralistic, guarantees the free expression of opposing political views by legitimate means - by armed fringe groups which act outside the control of the army or the police, or which are in the pay of private interests, by common criminals and by all who resort to violence in order to settle any kind of conflict or to express hatred, and to indicate the inability to conceive that there can be divergent views in freedom. But the many and varied causes of human rights violations in Guatemala as well as the injustice of placing the blame solely at the door of the Government must be borne in mind. It is equally true and should always be remembered that the Government has a legal, political and moral obligation both nationally and internationally, to guarantee the enjoyment of human rights to all persons under its jurisdiction.

75. For personal reasons, the Expert is unable to continue the mandate which the Commission had assigned him, and this report is therefore his last. He wishes to thank the Commission for the confidence shown him and the support which he received and to say that the case of Guatemala and the changes which occurred in the human rights situation during the years in which he was required to observe the process at first hand enabled him to study a complex and difficult situation, which raises serious doubts and questions.

76. First of all, there is an apparently insurmountable gulf between law and reality, between what should be and what is and between the rule and what is actually done. This is a particularly serious matter in Guatemala and has already been referred to by the Expert in other reports. Until this gulf is bridged, until this breach begins to close, the human rights situation will not improve. The traditional legal approach, the belief that problems can be solved because a rule, full of fine-sounding words exists, but is not applied is one of the worst obstacles to progress on human rights issues. However, one should not think that the law does not play an extremely important role in the overall process of improvement. Legal standards are absolutely essential. Without the law, there can be no progress in human rights but if the law is not applied and no serious attempt is made to enforce it, maintain it and keep it alive and effective it is of little use. The law should be applied and should serve as a means of forcing a change in the situation and it is one's bounden duty to use it and not keep it there as an ethereal, distant, unattainable realization, divorced from reality.

77. Second, if material, economic, social and cultural conditions do not change, if there is no movement away from a society of exploitation, of immutable privileges and of entrenched injustice towards a society which is supportive, tolerant and fair, human rights cannot become a living reality, available to all, the basis for peace and progress.

78. Third, without democracy, without free elections, without constitutional Governments, it is not possible to contemplate an improvement in the human rights situation. However, one must recognize that the democratic Governments in Latin America which have succeeded military dictatorships have managed to achieve very little. This is not due only to the economic and social situation but to other real factors of power. These factors, which are outside the government apparatus, but which sometimes infiltrate the Government, the police and the armed forces, have proven to be stronger than even the Government itself, which is unable to dominate them.

79. The Government itself may respect human rights, but it lacks the ability, power or authority to ensure that they are fully and freely exercised and is unable to punish violations and guarantee peace and order based on freedom. It lives in fear, a prisoner of forces which it cannot control. This is a tragedy, a formidable problem, which has not been solved and with no prospect of an immediate solution. It has a negative and decisive impact on the situation in Guatemala which cannot be understood or tackled if it is not taken into account.

80. It should be acknowledged, with modesty and relativism, that it will not be possible to achieve any significant improvement in the human rights situation in the short term. A strengthened democratic Government, which is a genuine source of authority, based on the Constitution, public order safeguarded by the law, illegal centres of power brought under control or eliminated outright, a society that believes and trusts in the law, violence eschewed and tolerance embraced, an understanding of the need for pluralism and co-existence for all ideologies in a context of freedom, an acceptance, intellectually and at the practical level of the "human rights culture" are the conditions that must be met in order to improve the human rights situation in what can only be a lengthy and arduous process.

81. In order to advance in this process, democracy must perforce continue, there must be elections and the Constitution must be maintained. If there is any interruption of this process, the Government would not even be able to do what it has done so far despite its shortcomings, limitations and adverse conditions, but with sincerity and conviction, and there would be a backsliding into a maelstrom of unconfined violence and the horror of widespread and continued human rights violations, perpetrated, fanned and encouraged by governmental authority. This would be unacceptable. The Expert, therefore, believes that the maintenance of constitutional democracy in Guatemala, despite its limitations, shortcomings and weaknesses, is vital in order to envisage the protection of human rights in the future.

82. The Expert wished to make these comments as this will be his last report to the Commission. He considered that it was his duty to state his views in complete frankness, and without reticence of any kind.

83. During these years of contacts with the situation in Guatemala he has come to love the country and its people as if they were his own. That is why he is confident that Guatemala is capable of overcoming the anti-democratic violence and of securing respect for human rights, based on a fully effective Constitution and on the far-reaching changes needed in the present economic and social situation.

Note

1/ National Statistics Institute, Encuesta Nacional Socio-Demográfica 1986-1987: Demografía, Total República, vol. 1, Guatemala, 1987;

Social Services Plan by the Archbishopric of Guatemala;

Report on the human rights situation in Guatemala, 1989, Human Rights Commission of Guatemala;

Special Report by the Centre for Human Rights, Research, Study and Promotion (CIEPRODH).

Annex I

PROGRAMME FOR THE SECOND HUMAN RIGHTS TRAINING COURSE ORGANIZED BY THE UNITED NATIONS CENTRE FOR HUMAN RIGHTS IN CO-OPERATION WITH THE MINISTRY OF FOREIGN AFFAIRS OF GUATEMALA AND WITH THE CONGRESS OF THE REPUBLIC OF GUATEMALA, THE MINISTRY OF THE INTERIOR, THE MINISTRY OF DEFENCE, THE SUPREME COURT OF JUSTICE, THE PROCURATOR FOR HUMAN RIGHTS AND THE CENTRE FOR DEMOCRACY

ANTIGUA
23 to 27 October 1989
(Ramada Hotel)

Monday, 23 October

Morning

9.00 - 10.30 a.m.	Registration of participants
10.30 - 11.30 a.m.	Opening of the course. Addresses by:
	- Héctor Mayora Dawe, Chairman of the Human Rights Commission of the Congress of the Republic of Guatemala
	- Julio Armando Martini Herrera, Deputy Minister for Foreign Affairs
	- Héctor Gros Espiell, Expert of the United Nations Commission on Human Rights
	- José Fernando Lobo Dubón, President of the Congress of the Republic of Guatemala
	Break
12.00 to 12.30 p.m.	General information on the programme

Afternoon

3.00 - 4.00 p.m.	The dissemination and teaching of human rights at the primary, secondary and university levels
	Héctor Gros Espiell, United Nations Human Rights Commission Expert on Guatemala
	Break
4.45 - 6.30 p.m.	The dissemination and promotion of human rights through the information media
	Marco Antonio Sagastume Gemmell, Adviser on Teaching Strategies

Tuesday, 24 October

Morning

9.00 - 9.45 a.m.	Dissemination and teaching of international humanitarian law and human rights to officers of the armed forces
	Héctor Gros Espiell
	Break
10.00 - 12.00	Round table on the dissemination and teaching of human rights in schools at special academic levels and through the information media with representatives of the: Guatemalan United Nations Association (José Fernando Mollinedo Castillo), San Carlos University (Erick Ovalle Martínez), Information Media (Zoila Reyes Illescas), Ministry of Education (Marco Vinicio Mejia), Rafael Landívar University (Jorge Cabrera Hurtarte)
	Moderators: Héctor Gros Espiell
	Marco Antonio Sagastume Gemmell

Afternoon

3.00 - 6.00 p.m.	Working Group I to prepare conclusions and recommendations on co-ordinated action to promote and protect the dissemination and teaching of human rights at the primary, secondary and university levels and through the information media

Wednesday, 25 October

Morning

9.00 to 10.30 a.m.	The dissemination and teaching of human rights to police and prison officers:
	Manuel Nuñez Pedraza, Principal Police Commissioner for State Security, Ministry of the Interior of Spain
	Break
10.45 a.m. - 1.00 p.m.	Round table on the dissemination and teaching of human rights to police and prison officers with representatives of the: Ministry of the Interior (María Consuelo Porras), Directorate-General

	of Prisons (Javier Antonio Rendón), Rural Police Department (José Rubén Carias) and the Police College (Magdaleno Pineda)
	Moderators: Manuel Nuñez Pedraza
	Julio Maier
Afternoon	
3.00 - 6.00 p.m.	Working Group II to prepare the conclusions and recommendations on joint action to promote and protect the dissemination and teaching of human rights to police and prison offices
Thursday, 26 October	
Morning	
9.00 - 10.00 a.m.	The incorporation and application of international human rights standards in Guatemalan internal law
	Eduardo Jiménez de Aréchaga, former President of the International Court of Justice
	Break
10.15 a.m. - 1.00 p.m.	Round table on the promotion of the application of international human rights standards in Guatemalan internal law, with representatives of the: Constitutional Court (Edgar Balsells Tojo), Office of the Procurator for Human Rights (Angel Alfredo Figueroa), Supreme Court of Justice (Olga Choc Jolomná and Miguel Angel Villatoro Schunimann) and Héctor Gros Espiell
	Moderator: Eduardo Jiménez de Aréchaga
Afternoon	
3.00 - 6.00 p.m.	Working Group III to prepare the conclusions and recommendations on co-ordinated action to promote and protect the incorporation and application of international human rights rules in Guatemalan internal law.

Friday, 27 October

Morning

9.00 - 9.45 a.m.	The dissemination and teaching of international humanitarian law and human rights to officers of the armed forces Jean-Pierre Givel, representative of the International Committee of the Red Cross
9.45 - 11 a.m.	Round table on the dissemination and teaching of international humanitarian law and human rights to officers of the armed forces, with the following representatives: Director of the Centre for Military Studies (General Jaime Rabanales Reyes), Director of the Polytechnic School (Colonel Mario René Enríquez), Head of the Army Information Unit (Colonel Luis Arturo Isaacs Rodriguez) Moderator: Jean-Pierre Givel Break
11.15 a.m. - 1 p.m.	Working Group IV to prepare conclusions and recommendations on co-ordinated action to promote and protect human rights by the dissemination and teaching of international humanitarian law to officers of the armed forces

Afternoon

4 - 5 p.m.	Distribution of course evaluation questionnaires Submission of the conclusions and recommendations of the Working Groups to the plenary meeting
5 - 6 p.m.	Award of certificates Address delivered by José L. Gomez del Prado on behalf of Mr. Jan Martenson, the United Nations Under-Secretary-General for Human Rights Closure of the course by Mr. Ariel Rivera Irías, Minister for Foreign Affairs of Guatemala
6 p.m.	Official reception given by the Minister for Foreign Affairs (Ramada Hotel)

Annex II

PROGRAMME OF ASSISTANCE PROVIDED BY THE CENTRE FOR HUMAN RIGHTS TO THE DEMOCRATIC GOVERNMENT OF GUATEMALA IN ACCORDANCE WITH COMMISSION ON HUMAN RIGHTS RESOLUTIONS 1988/50 AND 1989/74

Ministry of the Interior and the Judiciary

February-April 1989. The services of Mr. Alejandro González Poblete, Head of the Legal Department, Vicaría de la Solidaridad, Archbishopric of Santiago, Chile, were made available to advise and assist the Guatemalan authorities with a view to protecting human rights especially in matters of enforced or involuntary disappearances. Mr. González Poblete mainly advised police officials but he also gave advice to the Advisory Commission on Human Rights Matters to the Office of the President of the Republic (COPADEH).

4-14 October 1988: Two fellowships for police officials: Mr. Enrique Cifuentes de la Cruz, Commissioner of Police, Head of the Office of Professional Conduct and Mr. Jose Alberto Estaban Lopez Coronado, Office of the Legal Adviser to the National Police to enable them to attend the XIth specialized course for police officers organized by the International Centre for Sociological, Criminal and Prison Research and Studies in Messina, Italy.

3-14 October 1989: Two scholarships for police officials: Mr. Luis Arturo Paniagua Galicia, Commissioner of Police, Head of the 5th National Police Corps and Mr. Francisco Flores Sandoval, Head of the Legal Department of the National Police Force to enable them to attend the XIIth specialized course for police officers organized by the International Centre for Sociological, Criminal and Prison Research and Studies in Messina, Italy.

18 October-17 November 1989: The services of Mr. Julio Maier, Resident Professor of Criminal and Procedural Law, University of Buenos Aires, Argentina, were provided to advise and train police officers and prison staff in the protection of human rights, the preparation of dossiers for legal proceedings and in making impartial inquiries into cases which occur in suspicious circumstances.

Office of the Procurator for Human Rights

1989. Books and documents were provided for a basic human rights reference library.

20 November-22 December 1988. Fellowship for Mr. Jorge Cabrera Hurtarte, General Secretary of the Office of the Procurator to study the organization and operation of the Office of the Parliamentary High Commissioner of Spain and to make the appropriate recommendations with a view to introducing the systems studied in the Office of the Procurator for Human Rights of Guatemala.

1989. Office equipment was provided for the Office of the Procurator.

20 September-5 October 1989. The services of Miss Beatriz Rueda Muñoz and Mr. Rafael García Ormaechea of the Office of the Parliamentary High Commissioner of Spain were made available to advise the Office of the Procurator for Human Rights of Guatemala.

Ministry of Education

January-December 1989. During the year the services of Mr. Marco Antonio Sagastume Gemmell, a local adviser on education and teaching strategies were made available to train a team of teachers from the Ministry in human rights instruction at the primary and secondary levels and to popularize human rights texts.

3-8 July 1989. Two fellowships for Mrs. Lidia Mercedes Rabanales Pinot, an urban primary school teacher, and Mrs. Olga Evelyn Amado Jacobo, Director of the Sectoral Advisory Unit of the Ministry of Education to attend the seventh international training course on human rights and peace, organized by the International Centre on Human Rights and Peace Training in Geneva (Switzerland).

August 1989. (The two fellowships projected for university professors to attend the Inter-American Institute of Human Rights course in San José were not utilized.)

Ministry of Defence

June 1989. (The two fellowships projected for officers of the armed forces to attend the course on international humanitarian law in San Remo (Italy) were not utilized.)

Advisory Commission on Human Rights Matters to the Office of the President of the Republic (COPADEH)

1989. Books and documents were provided for a basic human rights reference library.

Ministry of Foreign Affairs

1989. Books and documents were provided for a basic human rights reference library.

30 January-11 May 1989. Two fellowships for Ministry of Foreign Affairs officials, Miss Araceli Phefunchal and Mr. Juan Carlos Cuestas Galvez to familiarize themselves, in Geneva, with international proceedures and the work of various United Nations bodies in the field of human rights (Commission on Human Rights, Human Rights Committee) as well as with the operation of the Centre for Human Rights and of international agencies, such as the ILO, UNHCR and the ICRC, in order to secure better co-ordination between the Centre and the Government of Guatemala.

Indigenous Communities

1989. From 13 February to 31 March 1989 and from 15 November to 20 December 1989, the services of Mr. Augusto Willemsen Díaz, a former official of the Centre and expert on indigenous populations were made available to advise the Guatemalan authorities on matters relating to the

advancement and protection of the indigenous communities. On his first visit, Mr. Willemsen Díaz provided training on the topic to staff from the Ministries of Urban and Rural Development, Education, Culture and Public Health, the Advisory Commission on Human Rights matters to the Office of the President and to the Congressional Commission on Indigenous Communities.

On his second visit, he concentrated primarily on advising the members of the Congressional Commission on Indigenous Communities on drafting a bill on indigenous communities that would expand the relevant article of the Constitution. It is anticipated that a third advisory mission of about two and a half months will be needed in 1990 to finish drafting the bill.

Human Rights training

The Centre for Human Rights together with the Government of Guatemala organized the first human rights training course from 14 to 18 November 1988 in Guatemala City. The course was attended by 60 persons (judges, magistrates, State officials, teachers, police officers, officers of the armed forces, deputies, members of the Office of the Procurator for Human Rights and of the Congressional Commission and the Advisory Commission to the Office of the President, and representatives of non-governmental organizations).

From 23 to 27 October 1989 the second training course was held in Antigua (Guatemala) as a follow-up to the first with approximately the same kind of attendance. Participants drafted a series of recommendations to be studied by the Guatemalan authorities and which could provide elements for a co-ordinated policy to promote and protect human rights by disseminating and teaching them in schools and universities and to law enforcement officials, judges, and the armed forces.

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ADVISORY SERVICES IN THE FIELD OF HUMAN RIGHTS

Report by the Expert, Mr. Héctor Gros Espiell, on Guatemala, prepared in accordance with paragraph 9 of Commission resolution 1989/74

ASSISTANCE TO THE GOVERNMENT OF GUATEMALA IN THE FIELD OF HUMAN RIGHTS

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I. INTRODUCTION

1. In chapter V (para. 65) of the report (E/CN.4/1990/45), there is an account of the assistance given to the Government of Guatemala in the field of human rights in accordance with resolutions 1988/50 and 1989/74 of the Commission on Human Rights.

2. While summarizing, as an addendum to his report, the main features of the assistance granted by the Secretary-General of the United Nations to the Government of Guatemala in 1988 (third quarter) and 1989, the Expert wishes to point out that he shares and endorses the conclusions and recommendations of the advisors: Mr. Alejandro González Poblete (chapter II A), Mr. Julio Maier (chapter II B), Mr. Rafael García-Ormaechea and Miss Beatriz Rueda (chapter III C), Mr. Marco Antonio Sagastume (chapter IV) and Mr. Augusto Willemsen Diaz (chapter V).

II. MINISTRY OF THE INTERIOR AND JUSTICE

A. Investigation of cases of enforced or involuntary disappearance

3. In the first quarter of 1989, the services of Mr. Alejandro González Poblete, Head of the Legal Department, Vicaría de la Solidaridad, Archbishopric of Santiago, Chile, were made available for two months to evaluate the quality of the inquiries into cases of enforced or involuntary disappearance and to advise the Government of Guatemala on the subject. The Advisor's observations and recommendations have been sent to the Guatemalan authorities. A summary of his report is given below. The Advisor points out that cases of enforced disappearance cannot be analysed in isolation from the problem of the effectiveness of policies and of the methods of preventing, investigating and punishing crime. A mere reading of the daily newspaper crime reports reveals a significant increase in crime and the inadequacy of the institutions responsible for crime prevention and for identifying the guilty parties and bringing them before the authorities having jurisdiction to judge them in accordance with the law.

4. In his analysis of the effectiveness of the prevention and investigation of crime in general, the Advisor identifies as the determining factors: (i) inadequate training of the police force; (ii) inadequate relations between the courts and police officials; (iii) lack of co-operation by the public in the investigation of offences; and (iv) lack of activity by the Public Prosecutor's Department.

1. Inadequate training of the police force

5. The members of the Executive Board and the National Police Headquarters Staff are well aware of the inadequacy of the professional training of the police force and of the urgent need to improve it: they have initiated the reorganization of the force by a series of initiatives designed to improve the professional and technical standards of police work and to strengthen control machinery so as to ensure responsible behaviour by the police force and to place it at the service of democracy as a guarantee of the people's safety and rights. These aims appear to be shared not only by the top commanders of the National Police but also by all the officials whom the Advisor had the opportunity of meeting during his mission (mainly young officials belonging to recently established sections or departments).

6. The Advisor states that it is vitally important that such initiatives should continue even if they do not produce immediate effects, that they should be extended to wider sectors of the police force and that the various plans should be put into effect as soon as possible. Moreover, given the magnitude of the problem of violence and crime in Guatemala, it is essential to increase the human and material resources available for the reduction and prevention of crime.

2. Inadequate relations between the courts and police officials

7. The inconclusive results of the investigations of criminal offences by police officials are due, according to the Advisor, to the fact that the investigations, started as a result of a complaint submitted and the findings of which are conveyed in a report to the competent court, are not as complete as the judges require and lack sufficient evidence to serve as a foundation for an efficient judicial inquiry.

8. The inadequacy of the judicial inquiry means that a large number of criminal cases remain "investigation pending". The examining magistrates' courts in the capital are supersaturated with files at that stage and have not sufficient capacity to reactivate them by ordering fresh inquiries. Apart from very serious cases which have aroused a public reaction, that is tantamount in practice to shelving the investigation.

9. A kind of vicious circle is produced in this way: the police officials are frustrated by the fact that the judges release individuals whom they bring to the courts accused of an offence while the judges feel they are not receiving the efficient professional collaboration which should be given them by the police to carry out successfully the investigations for which they are responsible.

10. This defect is undoubtedly connected with the inadequate professional and technical training of the average police official but also with shortcomings in the working methods of both the courts and the police. Such methods should help to remedy the inability to communicate and to compel smooth and efficient collaboration.

11. The authorities, of both the Ministry of Justice and the police, are aware of this defect. At the moment, with the technical assistance of the Criminal Justice Centre of Harvard University Law School, a "pilot plan" is being implemented in three courts in Guatemala City, with the participation of the appropriate police officials, for the purpose of improving co-ordination of the work of the officers of the court and that of the police officials and optimizing the performance of both sides for the sake of a better administration of justice.

3. Lack of co-operation by the public in the investigation of offences

12. The lack of co-operation by private individuals, whether witnesses or actual victims, their close relatives and other persons concerned with the investigation of offences, is a defect reported not only by judges and police officials but also by lawyers and by persons not involved in legal or judicial work.

13. Various reasons are given for this unwillingness of private individuals to become involved: on the one hand, there is a fear of possible reprisals by the criminal elements arising from a feeling of defencelessness in the face of very widespread crime and, on the other, a lack of confidence in the police and also in the effectiveness of the judicial system.

14. It seems urgently necessary to plan and put into effect sustained publicity campaigns which would both inform the public of the initiatives and work by the competent organizations to prevent and investigate criminal offences and endeavour to educate it in terms of its civic duty to help eradicate crime.

15. However, as regards the services legally responsible for peoples' safety and for the prevention and punishment of crime, no publicity campaign can be effective if it cannot be supported by effective results. In the case of the National Police, in particular, such a campaign should give an account of its task of ensuring the safety of the public through the prevention and suppression of crime within the framework of the law. The Advisor comments that, although the Citizens' Protection System (SIPROCI) can be justified as a temporary measure in view of the current defects, a professional police organization should have the monopoly of preventing and suppressing crime.

4. Lack of activity by the Public Prosecutor's Department

16. The Guatemalan Code of Penal Procedure provides that the initiation of criminal proceedings is essentially the responsibility of the Public Prosecutor's Department. It must be involved in all the stages of a public trial, of which it must be notified from the very outset, and it is responsible for advancing the investigation, enforcing judicial decisions and, in general, seeing to the prompt and correct administration of justice. It is empowered to approach the respective authorities, even before the trial begins, to ensure that the inquiry and investigation are being carried out properly.

17. None the less, the Public Prosecutor's Department does nothing very much in the investigatory stages of the case, limiting its intervention to appealing against the judgements handed down by the court of first instance when it deems this appropriate. The Advisor recalls that the interests of society are involved in the investigation and legal punishment of offences and that the Public Prosecutor's Department was set up precisely to represent those interests.

18. All the comments made regarding the defects and inadequacies of criminal investigations in general also apply, and to an even greater extent, to the police investigations and judicial inquiries into cases of enforced disappearance and extra-legal executions.

19. In the course of his mission, the Advisor acted as consultant to the Missing Persons Section of the National Police, the Advisory Commission on Human Rights Matters to the Office of the President of the Republic (COPADEH) and the Special Affairs Department of the Ministry of Foreign Affairs.

20. On the basis of an examination of files, conversations with officials and opinions received from other sources, the Advisor made some comments on the work of the Missing Persons Section of the National Police. These are as follows:

(a) The Missing Persons Section has, in fact, received a large number of reports of "disappeared persons". Those relating to Guatemala City, a high proportion of the whole, were investigated directly by the staff of the Section, in productive field work;

(b) Cases occurring in the Departments are investigated by the local police force; the Section neither directs nor guides such investigations, nor does it make a qualitative assessment of them from the point of view of scientific police work;

(c) The work done by the Section is socially necessary and useful, since it meets the demands of the relatives of missing persons, which should be efficiently complied with by the police;

(d) Most of the cases investigated do not arise from situations of enforced or involuntary disappearance; as confirmed by the statistics prepared by the Section itself on the reasons for disappearance, the highest figures (more than 70 per cent) relate to family problems and migration;

(e) It would seem that the purpose of the Section's work is solely to establish what has happened to the missing persons and not to investigate any criminal offences that might have caused the disappearance; thus, when it becomes clear that a missing person is dead, the fact is recorded and, at least as far as the Section is concerned, the investigation is dropped and the case is closed;

(f) The centralization of investigations into cases of disappearance, which the Advisor was informed was the task of the Section, is carried out only with respect to cases in the capital; as regards the rest of the country, it is only the information that is centralized.

21. None the less, enforced disappearances and extra-legal executions still occur in Guatemala. Despite the fact that such cases of political crime seem to be confused with common violence and crime, the Advisor encountered no one who denied their occurrence. On the contrary, there was very general consensus in society that politically motivated crimes were still occurring.

22. If it is to be investigated effectively, political crime cannot be regarded as a succession of isolated deeds. On the contrary, experience shows that it is not the work of criminals acting individually; behind them, in the planning and the selection of victims, and even in the choice of methods of execution, there are unlawful organizations and associations. Consequently, to halt these activities, it is not enough to discover and punish the actual perpetrators; it is essential to identify these organizations and to prosecute the master-minds and those who help by contributing material resources and information so as to put an end once and for all to their criminal activities. From this point of view, it is obvious that investigations of political offences produce a reciprocal feedback and that inquiries are likely to be effective only if they are centralized in a single investigating unit.

23. The Advisor states that such a central investigating unit should, as an urgent priority, be included in the National Police, with the most experienced and best trained staff available, and supplied with the necessary material resources. It should be responsible for investigating cases of enforced disappearance, extra-legal executions and other forms of political crime, such as threats, short-term abductions and cases of intimidation.

24. With regard to the work of the Advisory Commission on Human Rights Matters to the Office of the President (COPADEH) the Advisor had the following comments to make:

(a) The purpose of the Commission's investigatory work is simply to establish the fate of the person who has disappeared. Once, for example, the death of the missing person is established, there is no attempt to investigate the cause of death;

When the Advisor pointed out to the investigators, in a case received the previous day and whose investigation was about to start, that, in addition to the missing person, four other persons had been kidnapped in the same operation whose bodies had been subsequently found, they informed him that they were concerned only with establishing the fate of the person who was still missing while the case of the other four persons would be passed to the Homicide Section of the National Police for investigation. The Advisor told the investigators that he did not think there was any justification for separating the investigations deriving from a single criminal act. He received a similar reply when he was giving advice concerning another case where four people had been killed; he was informed that it was a closed case because it was outside the Commission's terms of reference;

(b) An essential step in all cases was consultation of the National Police if the person whose disappearance was reported had a criminal record. If the report indicated that the missing person had been working for some individual or company, the Guatemalan Social Security Institute was asked whether the missing person had indeed made contributions through that employer. Until the answers were received, the investigations were suspended;

(c) Various cases discussed had not been handled, despite the fact that they had been received several months previously, either through lack of time or because the investigators had not yet reached the Department in which the deed had occurred (Alta Verapaz);

(d) On comparing the date on which cases were communicated to the Government and that on which the documents were received by the Commission, it was noted that long periods elapsed, sometimes months on end.

25. The Advisor's scrutiny of the Commission's work did not qualify him to make any practical recommendation. All he could do was give his opinions. He does not think that the Commission's achievements are very relevant, especially in the light of the hierarchical position and purposes assigned to it by the Government Order that set it up. Its contribution to the clarification of cases of enforced disappearance is minimal; it has done nothing about situations that occurred before the present Government took office. There appears to be no justification for this self-denying limitation of its competence to simply establishing the fate of the missing persons.

26. Instead of maintaining two organizations with limited resources and inadequate results for such investigations - the Commission and the Missing Persons Section of the National Police - it would seem preferable to concentrate the resources in a political crime investigation unit.

B. COUNSELLING AND TRAINING POLICE OFFICIALS AND OFFICIALS OF THE JUDICIARY

27. From 18 October to 28 November 1989, the advisory services of Mr. Julio Maier, Professor of Criminal and Trial Law in the University of Buenos Aires, Argentina, were made available to the Guatemalan authorities to counsel and train officials of the administrative or judicial institutions involved in the administration of the criminal law, particularly members of the staff of the Ministry of the Interior. His mission consisted in holding courses for the various police forces operating in the country (with the significant exception of the so-called "Mobile Military Police", a military force which is subordinate to the Ministry of Defence) and talking to their authorities; holding courses for officials of the Public Prosecutor's Department and for judges; interviewing and lecturing senior officials of the Ministry of Justice and helping with the second national human rights training course. The Advisor also visited various prison establishments. Some of the conclusions from the Advisor's report on the administration of justice in Guatemala and his recommendations for improvements are given below.

28. In the procedure currently practised in Guatemala only the records (written documents) are of any importance because, apart from the direct information of the evidential items, the procedure consists of a written inquiry with which the parties interested in the case (the accused or the victim) have no connection at all. With rare exceptions such parties do not attend the proceedings which are going to produce the ultimate verdict (conviction or acquittal) but are, at best, represented by a counsel who is concerned solely with the defence of their interests. The judge gives the verdict on the basis of the written documents, whose preparation is normally delegated to junior officials. The judge who pronounces the judgement is not the one who had listened to the evidence and the dialogue - if the term can be used of this inquiry - is not public in the sense that members of the public or even interested parties, including the press, can attend and follow it. The basis of everything is the dossier, the file which contains the documents prepared by junior officials of the judiciary.

29. It is a highly verticalized system of justice, including internal control machinery which functions independently of the will of the people involved in the proceedings and in which the delegation of functions to junior officials is a way of reducing the extremely heavy work-load, which is completely disproportionate to the human resources available.

30. In view of the fact that the Public Prosecutor's Department plays a purely formal role in the proceedings, the judges have to assume, both legally and practically, the simultaneous functions of interrogator (prosecutor) and adjudicator.

31. It is hardly necessary to say that such proceedings and such an organization are not appropriate to a State subject to the rule of law nor, indeed are they in keeping with the various human rights conventions which provide for a public trial, with the accused being present at all stages and having the possibility of defending himself as well as the legal assistance of a defence counsel. In fact, it is an inquisitorial investigation, based on the colonial law inherited from Spain, apart from some minor, non-systematic, changes that were introduced to bring the procedure into line with certain guarantees of individual safety (e.g. the prohibition of torture or coercion to obtain information).

32. In the system applied in Guatemala, the examining magistrate is a mixture of interrogator and judge: on the one hand, he is trying to ascertain the truth and, on the other, he is the legal guarantor of the citizen's rights. Quite apart from the confusion between the functions of prosecuting and adjudicating, or perhaps on account of this confusion, it may be readily concluded that he is not efficient in either of these tasks.

33. In particular, the machinery of justice is inflexible in its operation and does not allow, for the purposes of the preliminary investigation, of any adaptation to the individual case. The examining magistrate and his material resources are exactly the same, whether it is a question of clarifying a simple act attributed to a single perpetrator (the accused) or to clarifying criminal manoeuvres that are complex, not only with respect to their contents or to the abstract contents of the offence, but also as regards the number of persons accused or the acts involved in the case (numerous suspects and multiple activities). It can readily be understood that, in complex cases, the machinery breaks down.

34. Everything could change if the Public Prosecutor's Department were to assume its true function, that of prosecution, including the conduct of a preliminary investigation, with the help of the police, to find the culprit for submission to the court. In this system, the judges are solely concerned with the work of adjudicating, including that of reaching a decision, by means of question and answer, on aspects of the investigation which involve guaranteed human rights: e.g. deprivation of liberty during the proceedings, house searches, opening of correspondence or interception of communications, etc., giving or refusing permission for the Public Prosecutor's Department or the police to act in the area covered by the guarantee in question, according to the case. In this way, they would more effectively carry out their basic function of protecting the rights of the individual, once they are relieved of responsibility for the efficiency of the investigation of the case.

35. It is thus clear that, whatever the defects in other areas (the police force for instance) and however they may be effectively resolved, such a solution will have no real impact until the judicial system has been modified.

36. It is also clear that, although the judges and officials of the judiciary are not directly and personally responsible for the violations of human rights which occur in the application of the criminal law, the system used to settle social conflicts of that kind is conducive to such failures to observe the basic rights of the human person.

37. Police officials often say, for example, that the judges do not give prompt decisions on their requests for search warrants which, for that matter, require some exaggerated formalities. They also allege that the judges advise them or instruct them to prosecute an arrested person presented for a judicial decision concerning his remand in custody and that, given the function of the police and its purposes (to find out the truth), this encourages them to use alternative ways of doing so, which are always at variance with human rights.

38. In this context, it is essential to secure a radical transformation of the Public Prosecutor's Department which is now carrying out a series of functions not connected with its chief task, prosecution. Whether or not these other functions are retained (representing the State in cases of other

kinds, controlling the legality of the administration, acting as legal advisor to the Executive (executive or administrative power)), a radical change is required in its basic function, criminal prosecution.

39. In the police context (apart from the Military Police which the Advisor's report does not include), the Government has made greater efforts to adapt operations to the rule of law and respect for human rights. In this respect, the establishment of the Office of Professional Responsibility represents a serious effort at self-monitoring and at purging the internal membership of the National Police. It has a section concerned with missing persons which, at the moment, is being equipped with technical facilities, namely, a computerized data bank. It has been noted that, in the minors' section, there are some technically-trained staff members - though few in numbers - and that the rights of the child and the rules concerning the prosecution of minors are known. What is more, the Police School has just been reopened. This trains police recruits and will, it is hoped, improve the training of the officials already in service. Its reopening coincided with the Advisor's lectures and may represent an auspicious event in the promotion and propagation of human rights. The plan of studies which it is intended to apply contains a unit concerned with the propagation of human rights which would be taught in close co-operation with the Office of the Procurator for Human Rights. The members of the Rural Police are trained in a special school and given instruction in human rights.

40. Nevertheless, there are deficiencies which are, in fact, well-known to the top police officials. The chief defect is the low level of civil education of the police officials, a problem that is difficult to solve since, in its turn, it arises from one of the problems basic to Guatemala: illiteracy and poor schooling. Some 85 per cent of the officials of the National Police have had no more than a primary education. There is still little knowledge of human rights, largely on account of the defect mentioned, and efforts in that area should be renewed.

41. Next in importance is a defect common to all police forces: a tendency towards bureaucratization. According to the information received, more than 30 per cent of the staff of the National Police are engaged in purely administrative and non-operational matters and, at times, this percentage climbs to more than 50 per cent.

42. Corruption is also important. This is known to the police authorities and attempts are being made to deal with it. There are a number of reasons for such corruption, the main ones being low wages and limited education.

43. In Guatemala, as in many Latin American countries, the limited degree of development reaches only one of its cities, the capital of the Republic, or to some extent another important city, while the remainder of the country suffers from internal underdevelopment. It may be noted that the National Police - with approximately 12,000 men - assigns almost 50 per cent of its strength to safeguarding Guatemala City. This, however, is a defect which is to be found in other areas also, e.g. apparently in the judiciary. As regards policing, it is noteworthy that the Rural Police sometimes covers country areas which are not covered by the National Police.

44. There is a certain competition between the National Police and the Rural Police, since there is no clear-cut division of areas of competence between the two organizations and this has, in the past, even given rise to some confrontation.

45. As regards imprisonment and pre-trial detention - the penitentiary system - it is noteworthy that, despite the fact that the treatment of prisoners does not conform to all the Standard Minimum Rules for the Treatment of Prisoners, the situation is far from being chaotic, as in some other Latin American countries, and, in the Advisor's experience, those rules are, in many ways, respected to a greater extent than other countries in the region.

46. It should be explained that not all the detention establishments (penal centres) belong to the penitentiary system or are administered by it. There are departmental prisons run by the police, in which the penitentiary system has minimum influence: some employee, called a "registrar" notes down the main data concerning the prisoner (identification, entry and departure) for statistical purposes. This situation is explicable soley on historical grounds (the police was formerly responsible for executing judgements in criminal matters), since both the penitentiary system and the National Police are subordinate to the Ministry of the Interior. I do not know the penal centres administered by the Police, so the report covers only the penitentary system.

47. It should be mentioned, also, that the judiciary quite correctly controls the execution of a sentence of imprisonment, with regard to its beginning, its ending and conditional release. Such control might possibly be increased, in the interests of the relative "judicialization" of the enforcement of penal verdicts, but it already exists in embryo.

48. Despite what has been said above, there are still some violations of the Standard Minimum Rules for the Treatment of Prisoners. The main ones are:

(a) Untried prisoners are not regularly kept separate from convicted prisoners (rule no. 8 (b)), though efforts are being made to comply with this rule. The "Constitutional Restoration" Remand Home is being built (it is almost finished) and this will render it possible to observe this rule properly, a rule which is also contained in the Guatemalan Constitution (article 10);

(b) The accommodation of prisoners does not always (Pavón Penal Farm) meet the conditions of rule no. 9, especially those of paragraph (1). This violation is, however, mitigated by the extent of the recreational facilities and the freedom of prisoners to use them at will during many hours of the day; and

(c) There is a certain neglect of the installations at the Pavón Penal Farm which is due partly to a lack of means and partly to the behaviour of the prisoners themselves, who do not look after the installations.

49. The Government is endeavouring to improve the situation. Apart from the construction of the Remand Home already mentioned, for untried prisoners, which will make it possible to separate them from the convicted prisoners, new kitchens and dining rooms have been completed in the Pavón Penal Farm which are well up to hygiene and health requirements. The prison population has

been brought approximately into line with the maximum accommodation potential of the prison system, whereas in the past it was sometimes as much as 4 times the capacity.

50. The work system deserves a separate paragraph. Prisoners work only on their own initiative, since the prison establishment does not provide machinery or materials to manufacture goods although it does tolerate and permit private initiative. The produce is marketed in the same way. While the Advisor has not been able to investigate the actual situation owing to lack of time, this presupposes the existence of "capitalists" who finance the work and the production and workers who produce the goods for wages, although individual undertakings are also conceivable. It also presupposes marketing shortcomings in the form of free middlemen paying low prices. In any case, the working portion of the prison population is low as compared with the idle portion and, here again, there is no distinction made between untried prisoners and convicted prisoners.

51. There are also some model establishments such as the Female Training Centre, but it must be recognized that the women do not present great problems. The convicted prisoners housed there are only 50 in number (at the moment of the visit), an ideal size for a prison.

52. According to the general statistics, which were supplied by the administration of the penitentiary system and, in the case of the Pavón Penal Farm, by the Director of the establishment, 70 per cent of the inmates are untried prisoners (remanded in custody) while only 30 per cent are convicted prisoners. Such a proportion is yet another indication of the failure to comply with the express rules of the human rights conventions (International Covenant on Civil and Political Rights, article 9, paragraph 3).

53. What is more, detention in custody is ordered in cases of offences which are punishable only by fines, a decision which violates the principle of proportionality by inflicting, during the trial, greater suffering - and indeed excessively greater suffering - than the law provides as a penalty for a person convicted.

54. Neither of these situations constitutes, however, a criticism of the penitentiary service which, in this respect, is only carrying out decisions by the courts but they do confirm the breakdown of the administration of justice in criminal matters and the damage that it does to the practical application of human rights.

55. The Advisor recommends that counsel and assistance be given to achieve a radical transformation of the system of administering justice in criminal matters, particularly in order to:

(a) Introduce public trials in criminal matters, the only way to consolidate the rule of law in the administration of justice, so as to render transparent the operational procedures which lead to judicial decisions and the judicial decisions themselves;

(b) Modify the system of preliminary investigation in criminal cases, by giving the leading role to the Public Prosecutor's Department (the natural organ for State prosecution though it will have to be changed structurally to carry out this function efficiently) as director of the investigation and the

Police as its immediate assistant (co-ordination of the functions of the two professions). This is the only way of rationalizing the existing human and material resources and tailoring them to the case being handled and thus rendering possible a certain efficiency in prosecution without impairing the rights of the accused;

(c) Reserve to the judges the right to decide, during the preliminary investigation also (by means of question and answer), if some investigatory action by the Police or the Public Prosecutor affects any of the guaranteed human rights of the accused, the sole way in which the judges can escape involvement in the success of the investigation and prosecution and thus be efficient custodians of citizens' rights; and

(d) Create a system of case selection which will make it possible to unblock the excessive work-load of the judiciary in criminal matters through rational methods with agreed solutions (diversion) and thus adjudicate effectively the important cases entering the system, in accordance with the human and material resources available.

56. The efficiency of the entire criminal system in protecting the human rights of the people depends on transforming the system of administering criminal justice. This will also condition the efficiency of the system in protecting the human rights of persons caught up in it. Any positive change in the other agencies of the system (such as the police) will have little real social impact if the judicial system is not changed and the transformation of the judicial system will require a profound change in the routines of the system's operators.

57. For the rest, the system of administering justice is one of the pillars on which the entire system of democratic life rests and a correct administration of justice, with procedures adapted to the requirements of the rule of law, is the best support for the consolidation of a democratic State.

58. Within the programme of changes to the administration of justice, it is essential that assistance be given to study the role of that service in the context of the indigenous population, which constitutes the majority in the country, to ensure that the new system respects the cultural background and the participation of members of this population in the task of judging their peers, even if special treatment is required, in keeping with the policy of developing and assisting and not discriminating against those people. Trial by jury, in criminal matters, could perhaps supply a solution to this problem, which is a major one and which deserves a special investigation.

59. The Advisor also recommends that assistance and counsel should continue to be given in promoting and spreading knowledge of human rights in Guatemala through:

(a) Training courses for judges, officials from the Public Prosecutor's Department and public defenders on the values protected by human rights, the consequences of the existence of such rights and the appropriate judicial system for ensuring that they are protected and respected;

(b) Courses and seminars to promote and spread knowledge of human rights aimed at police officials, including support for their ordinary training programmes;

(c) Support for the programmes to improve the administration of criminal justice and the police service undertaken by the Guatemalan Government, including the Ministry of Justice, in keeping with the aim of ensuring protection and respect for human rights in the State's exercise of penal authority.

60. It should be mentioned that besides assistance from the United Nations Centre for Human Rights on matters relating to the administration of justice, Guatemala is also receiving the following aid: (a) international programme of assistance for training in criminal investigation with advice and finance from the United States Justice Department; (b) training of Guatemalan police officials in Spain, a programme financed by that country; (c) training of Guatemalan officials in the Federal Republic of Germany under a two-year programme financed by that country; (d) regional project on the administration of justice by the United Nations Latin American Institute for the Prevention of Crime and Treatment of Offenders (ILANUD); (e) Harvard University project for setting up pilot model courts; (f) bilateral project by AID and the Ministry of Justice for reforming or improving all institutions involved in the administration of justice.

61. It should also be noted that following the Advisor's mission and the counsel and training he gave to the Ministry of Justice, Mr. Maier was invited by Mr. Edmundo Vasquez, President of the Supreme Court of Justice, to work on the reform of the Guatemalan penal system in 1990.

C. Training fellowships

62. Four fellowships were given to the following police officials and officials of the Ministry of the Interior to enable them to attend specialized policing courses: Mr. Enrique Cifuentes de la Cruz, Superintendant of Police, Chief of the Office of Professional Responsibility; Mr. José Alberto Esteban López Coronado, Legal Advisory Service of the National Police; Mr. Luis Arturo Pantagua Galicia, Superintendant of Police and Chief of the Fifth National Police Corps; and Mr. Francisco Flores Sandoval, Chief of the Legal Department of the National Police. These fellowships enabled two Guatemalan officials to attend each of two specialized policing courses, in 1988 and 1989, respectively, organized by the Centre for Sociological, Criminal and Prison Research and Studies in Messina, Italy, the XIth course being held from 4 to 14 October 1988 and the XIIth from 3 to 13 October 1989.

III. OFFICE OF THE PROCURATOR FOR HUMAN RIGHTS

A. Training fellowships

63. A fellowship was awarded to Mr. Jorge Cabrera Hurtarte, Secretary to the Procurator for Human Rights of Guatemala, for the period 20 November-22 December 1988, to study the organization and operation of every department of the Office of the Spanish Parliamentary High Commissioner and see whether the systems developed in Spain could be introduced in the circumstances prevailing in Guatemala. On the basis of the work done during Mr. Cabrera's secondment to the Office of the Parliamentary High Commissioner in Madrid, the Office of the Procurator for Human Rights of Guatemala has set up the following activities and departments:

(a) Press Department: This has a staff of two persons, who prepare a daily press summary, from which information is taken as a basis for opening files on cases for ex-officio investigation. The Director of the Department is responsible for ensuring that the Procurator for Human Rights is mentioned in the newspapers at least three times a week, in which he has so far been successful. The staff of the Department also accompany the Procurator to take video films and photographs of his activities. Arrangements have been made to monitor radio and television broadcasts in order to note new complaints and to keep abreast of what is being said about the Procurator for Human Rights and of reports of violations of human rights.

(b) Library: A library was organized, and has since been expanded with books and documentation provided by the United Nations Centre for Human Rights.

(c) Data-processing: A Data-processing Department has been set up with a computer donated by AID, on the basis of some of the programmes used in the Office of the Parliamentary High Commissioner. It is at present issuing weekly reports designed to keep a check on the way cases are being dealt with and is working on the development of new programmes, since delivery of three more computers is expected at any moment.

(d) Correspondence: The arrangements for delivery of correspondence have been reorganized; at present some 90 per cent of notifications are made by post. Final decisions in cases are always notified in person, and the fact of the notification is noted on the copy. A private firm has been engaged which delivers documents more cheaply and rapidly than the post office.

(e) Registration Department: The Department has been completely reorganized and moved to a room separate from the other offices, with individual booths so that a number of complaints can be received at the same time. There has been a change of staff in this Department, and special training is now being given in dealing with the public.

(f) Areas of work: Efforts are being made to reorganize the areas of work to bring them into line with the practice in the Office of the Parliamentary High Commissioner. It is hoped that this project will be completed by the end of this year.

(g) Investigation Department: The Investigation Department has been set up and currently employs a staff of three persons, who investigate in particular reports of disappearances. They do this confidentially, reporting direct to the Procurator for Human Rights.

(h) Promotion and Education Department: A Director has been appointed to co-ordinate human rights publicity and education within the country. A nation-wide programme on the rights of the child has been undertaken, sponsored by the Government of the Kingdom of the Netherlands at a cost of some $300,000. The first publications have already been issued, and the launching of the campaign has been publicized by radio in five dialects all over the country.

(i) Annual report of the Procurator for Human Rights: The annual report which the Procurator for Human Rights has to submit to the Congress of the Republic has been remodelled on the basis of the report of the Parliamentary High Commissioner for 1987.

64. In his report, Mr. Cabrera stated that the action taken at the Office of the Procurator for Human Rights in Guatemala had improved and streamlined its operations, so that his visit to the offices of the Parliamentary High Commissioner in Madrid, Spain, had been a very useful one.

B. Supplies of books and equipment

65. In 1989, books and documents were supplied to the Office of the Procurator for Human Rights, as was office equipment.

C. Advice by the Office of the Parliamentary High Commissioner in Spain

66. From 20 September to 5 October 1989, the Office of the Procurator was provided with the services of two Advisors from the Office of the Parliamentary High Commissioner in Spain. Mr. Rafael García-Ormaechea and Miss Beatriz Rueda Muñoz, General Secretary and Principal Private Secretary respectively of the Office of the Parliamentary High Commissioner in Spain for the purpose of: (a) giving training on general aspects of human rights; (b) providing information on the role of the Parliamentary High Commissioner in protecting human rights; (c) supplying advice on practical aspects of the application of the law and the Constitution in defence of human rights; (d) evaluating the reforms introduced in the Office of the Procurator following the 1988 visit of his Secretary, Mr. Cabrera, to the Office of the Parliamentary High Commissioner in Spain and making appropriate suggestions; and (e) advising on the operation of branch offices throughout the country.

67. The two Advisors' recommendations, which have already been transmitted to the Guatemalan authorities, were as follows:

(a) Given that the initial establishment of the Central Office in the capital has been completed, with adequate staff and an acceptable level of organization and methods of work, it is essential that the budget of the Office of the Procurator should in future be big enough for it to maintain at very least the level achieved. If that is to be done, it will be necessary to envisage giving priority to gradual development of the data-processing system, making the investment necessary to cope with the increase there will inevitably be in the number of complaints.

(b) Any economic aid sought by the Procurator's Office from abroad should be supplementary. The Office's activities should not, as hitherto, depend upon such aid; if it has office furniture, computer equipment and vehicles - essential for outside investigations - and if it has funds for its publicity campaigns, that is due to financial contributions from outside sources, such as USAID, the United Nations and the Netherlands Government.

(c) Attention has to be drawn to the disadvantages of the Central Office's present location in Guatemala City, in a residential district far away from the centre, transport connections and the areas where most people live. While we recognize that a move would be difficult, we believe the problem should be tackled in the near future, a more central location being chosen with better transport facilities so as to give the inhabitants of the capital and its suburbs better access to the Office of the Procurator.

(d) It is necessary to make people better informed about the Office of the Procurator for Human Rights as an institution, reaching all urban and rural areas in the country. The number of complaints will then rise to a level more consistent with the sociological facts and the size of the population. For this purpose, it will be essential to maintain the publicity campaign launched in the media - which has been well organized so far, in the various official languages and dialects - and to promote the establishment of branch offices in the departments. The existing departmental offices maintain a decent level and their staff seem adequate. However, the idea of setting up 20 offices by the end of the year, without definite budgetary resources, seems overambitious. A degree of caution is perhaps to be recommended in the selection of sites, staff, installations, etc., in the light of the budgetary resources available. This does not, of course, mean that there should be any curbing of the effort to establish these branch offices, which, as already stated, seem to be essential.

(e) To sum up, the Office of the Procurator for Human Rights ought in the short term to have a budget which would enable it to perform the following tasks out of its own resources: (i) transfer the Central Office to a location in the centre of the capital; (ii) gradually and judiciously establish branch offices in the departments; (iii) expand the date-processing resources at the Central Office in the short term and establish them at branch offices in the medium term; (iv) further develop the publicity campaign on the Office's terms of reference and the work it does. All this should be done without prejudice to resources which, without being essential, might be forthcoming from third parties for specific related purposes in order to supplement the work of the Procurator's Office. Thus, for the record, we might mention the reference library on human rights donated by the United Nations Centre for Human Rights to the Office, which lacked one of its own.

(f) Greater efforts are called for in the activities entrusted to the Procurator's Office under the Constitution and the law, namely, to protect human rights, promote human rights education and awareness and ensure respect for those rights. Specific agreements should be entered into with the Ministry of Education and the universities stressing the need for a good knowledge of the subject at different levels and in different disciplines. Arrangements might also be made for inspectors to visit educational institutions and assess the level of the teaching staff and the instruction they give. Sectoral agreements could also be reached with the army and with the appropropriate ministries with a view to reaching those sectors of the population who, because of their social circumstances, may find their opportunities for exercising their rights limited, such as soldiers, prisoners and inmates of institutions for the old and mentally ill, and also other groups such as women and children.

(g) Every year the Procurator's Office should establish an order of priority in its objectives, making adequate plans well in advance with regard to the matters on which it is going to conduct investigations. That does not mean that it should neglect its immediate daily task of dealing with individual complaints by citizens, but that it should give due thought to the number and nature of cases it will tackle on its own initiative, for the most part on the basis of reports in the media.

(h) The extent of the powers invested in the Procurator under the law makes it essential, in our view, that they should be interpreted restrictively, at least until his Office gains enough acceptance and resources to enable it to do more. For the time being it should as far as possible select matters that involve the private sector. There should also be a clear demarcation of questions that are a matter for government economic policy or that are strictly the concern of the judiciary.

(i) It is urgently necessary to secure greater collaboration between the Office of the Procurator and the Congress of the Republic, through the Chamber's Human Rights Commission. At present such collaboration is purely formal. The two bodies should establish joint work programmes and hold periodic meetings, and in general work to achieve greater flexibility, so that matters dealt with by the Commission can be investigated by the Procurator and so that the results of his investigations can, in their turn, produce some response, with the Procurator himself attending to provide information whenever parliamentary proceedings make that necessary. At present, the Office of the Procurator seeks support for its activities from the media, from public opinion and, as appropriate, from the international organizations. But it lacks the natural environment it should operate in, which in the long term, since it has been given a parliament Commission, can only be the Congress of the Republic.

(j) Proper arrangements should also be established for collaboration and co-operative action with the Human Rights Commission reporting to the President of the Republic, with the highest body of the judiciary and, in particular, with the Attorney General.

(k) With regard to investigations into reports of disappearances, by far the most serious cases - both qualitatively and quantitatively - that the Procurator for Human Rights has to deal with, it is to be recommended that the Office of the Procurator itself, together with other institutions and the general public, should realize that this problem goes far beyond the possibilities and resources available to the Procurator;

(l) In the relative terms already indicated, a state of opinion should also be created tending towards decisive institutional and governmental support for specific individual investigations undertaken by the Procurator into disappearances;

(m) For obvious reasons, priority attention should be given to new or recent reports of disappearances, in the form of immediate investigations;

(n) The resources available to the Investigations Department to deal with disappearances should be increased without fail. They are definitely inadequate as things now stand, so it can be imagined what the situation will be when it also has to co-ordinate the work of the departmental offices, which will need to be continuously staffed;

(o) Methods of investigation should be improved by conducting on-the-spot inquiries to the fullest possible extent, interviewing as appropriate all witnesses, relatives and neighbours, and also interviewing any military or police authorities that may have been involved in the case, obtaining compulsory official documents of all kinds, such as doctors and

lawyers' reports, police-cell or prison registers of admissions and discharges, etc. and following up judicial proceedings in this area, without interfering with the work of the judiciary.

(p) The staff of the Procurator's Office should, in this sector, be selected on the basis of the highest professional standards, for their knowledge and dedication. Obviously it is not every official who is qualified to run this department and carry out the investigations it is required to make.

(q) Finally, the results of investigations into disappearances should be given maximum publicity, both the positive and the negative aspects, the circumstances of each particular case being spelt out. Thus they should be:

(i) Reproduced in full detail in the Procurator's regular annual report to the Chamber;

(ii) Brought to the attention of public opinion through the media;

(iii) Reported regularly to the Human Rights Commission of Congress, with the attendance of persons whose appearance the Procurator or the Commission considers necessary in more serious cases;

(iv) Brought, without fail, to the attention of the international bodies responsible for protecting and guaranteeing human rights.

(r) The fact that the Procurator for Human Rights may resign and be replaced means, legally, that the staff of the Office can also be replaced, and in practice implies, according to our information, that the whole staff can be changed at all levels. Without passing judgement on the advantages and disadvantages there may be to this administrative policy in general, we would point out how serious it is for an institution just getting under way, whose staff are beginning to achieve the level of specialization and professional skills their difficult work requires. We would therefore recommend that as far as possible some qualified advisers and a permanent administration should be kept in their posts. Otherwise the exchange and training missions undertaken, including the present one, would be largely wasted.

68. Finally the advisory staff should be required to observe, with the greatest strictness, the legal provisions regarding incompatibility.

IV. MINISTRY OF EDUCATION

A. Advice on human rights training and teaching

69. From January to December 1989 the Ministry of Education was provided with the services of a local Advisor, Mr. Marco Antonio Sagastume Gemmell, for the following purposes: (a) selecting and training a team of 10 persons intended to have a multiplier effect in human rights education; (b) planning and implementing an educational project on human rights for primary-school teachers; (c) advising the Ministry of Education on the introduction of human rights into primary education; (d) preparing teaching materials on human rights; (d) developing policies for fostering belief in the rule of law as a prerequisite for the observance of human rights. These activities were affected by a nation-wide strike of primary-school teachers beginning in May

and ending in August. It has also to be said that, after the Advisor had received threats to his personal safety if he did not abandon all his human rights activities, he had to leave the country and spend some days in Costa Rica.

1. Selection and training of a team of 10 intended persons to have a multiplier effect in human rights education

70. Because of the teachers' strike, activities were concentrated more at private educational institutions. Talks were given at 233 private educational institutions on human rights in the teaching profession (primary and secondary education). This resulted in the formation of four teams of students at these institutions, each with 10 members, with the aim of producing a multiplier effect in human rights education. The first activity of these teams, which meet regularly every week with the local United Nations Advisor, was for each of them to invite 100 boys and girls to attend a children's human rights course. These activities were scheduled for the end of November/December and were held on Sunday mornings in four parks, with readings of stories on human rights, followed by an exhibition of children's drawings.

71. The Advisor states in his report that he also gave courses on human rights at secondary level in military colleges. They were attended by officers who recognized the importance of the subject in education. On the other hand, primary-school teachers in various parts of the country are afraid of reprisals if they give courses on human rights.

2. Planning and execution of an educational project on human rights for primary-school teachers

72. This could not be carried out because of the teachers' strike. A Centre for Human Rights was, however, set up in the Ministry of Education, and a human rights documentation centre is in the preparatory stage.

3. Advice to the Ministry of Education on the introduction of the subject of human rights into primary education

73. A document was prepared setting out the subject matter that should be covered from the first to the sixth year of primary education in the area of human rights, including a knowledge of the United Nations. The Advisor was in contact with UNESCO experts on this matter. The proposal prepared for the Government is on the lines that, in Guatemala, it is essential that every schoolchild and student should know how to protect his rights and that human rights should therefore be dealt with as a separate subject.

4. Preparation of teaching material on human rights

74. The Advisor is at present working on a document to provide primary-school teachers with a knowledge of the educational methods and techniques and the information they need in the area of human rights. Material is also being prepared for children aged 7 to 12, using short stories and play-school techniques. At the request of the Minister of Education, 15 booklets on different human rights subjects and a poster on the Universal Declaration of Human Rights have been prepared for the schools.

5. Planning of policies to foster belief in the rule of law as a prerequisite for the observance of human rights

75. A series of lectures were given on this subject at universities in the capital teaching law and social and political science. A proposal was drawn up for the establishment of a chair of human rights. The possibility of setting up a Guatemalan institute for human rights education was also discussed.

76. The Advisor also gave a series of talks to different government bodies, such as the Ministry of Labour and Social Welfare and the Ministry of Foreign Affairs, and to the Guatemalan Bar Association. Columns designed to educate readers about human rights were introduced in the weekly newspaper 7 días and the daily newspaper El Gráfico.

77. Under the project, a compilation has also been made of the international treaties on human rights to which Guatemala is party.

78. The Advisor draws the Government's attention to the fact that human rights education needs to be supported by respect for those rights in everyday life. It is difficult to make the idea of respecting human rights credible if armed groups are violating them in broad daylight. A Government's legitimacy is based on acceptance of its authority. Every effort should therefore be made to ensure that wrongdoers cannot behave with impunity in Guatemala.

79. Among the recommendations made by the United Nations local Advisor to the Guatemalan Government are the following:

(a) Continuation of the project on human rights education with the appointment of two officials to provide better services to the teaching profession;

(b) Launching of a national campaign on human rights education in 1990;

(c) Organization of a seminar on "human rights education and the teacher's responsibility";

(d) Acquisition of educational material on human rights for the different public libraries, since at present they have none;

(e) Provision of support to enable the Ministry of Education to introduce the subject of human rights into primary education;

(f) Broadcasting of educational programmes concerning human rights on national radio and television, using the resources and air-time available to the Secretariat for Public Relations of the Office of the President.

B. Training fellowships

80. In July 1989, two fellowships were made available to the Ministry of Education for Mrs. Lidia Mercedes Rabanales Prust, an urban primary-school teacher, and Mrs. Olga Evelyn Amado Jacobo, Director of the Sectoral Unit of the Ministry's Advisory Service, to enable them to attend the seventh international session on teaching human rights and peace, organized at Geneva from 3 to 8 July 1989 by the International Centre for Teaching Human Rights and Peace.

V. INDIGENOUS COMMUNITIES

A. Advice on promotion and protection of the rights of indigenous communities

81. The services of Mr. Augusto Willemsen Diaz, an expert on indigenous affairs and former member of the Centre's staff, were made available so that he could advise the Guatemalan authorities on matters relating to the protection and promotion of indigenous communities' rights. On his first mission, from 13 February to 31 March, Mr. Willemsen Diaz gave training and advice to officials from the Ministries of Urban and Rural Development, Education, Culture and Public Health, from the Advisory Commission on Human Rights Matters to the Office of the President and from the Indigenous Communities Commission of Congress. His first report, with recommendations, has been sent to the Guatemalan authorities. At the time of the preparation of this report he is engaged on a second mission (15 November to 20 December 1989) with the aim of advising more specifically the Indigenous Communities Commission of Congress, in response to a request by the Commission to the Secretary-General, on the drafting of a law on indigenous communities which will develop the principles set forth in the Constitution. The Advisor is to undertake a third mission lasting two and a half months in 1990 to finalize the text of the law.

82. On his first visit, Mr. Willemsen Diaz gave advice to officials from different State bodies on the question of indigenous rights in the light of the standards, principles and ideas embodied in the United Nations system of protection.

The expert Advisor's recommendations are given below:

1. Development

83. The indigenous communities must be regarded as a separate component within Guatemalan society as a whole and, as such, receive the individual attention they deserve;

84. It is essential to adopt positive and constructive approaches to indigenous development, which must meet certain requirements, the main ones being:

(a) Such development has to be endogenous, i.e. it has to originate in the communities themselves and spread from the inside outwards and from the bottom upwards;

(b) It has to be complete or comprehensive, i.e. it has to cover all the necessary elements, which must be duly integrated with each other;

(c) It requires the indigenous community to be settled on its own territory, with effective access to the natural and spiritual resources of its ancestral lands or the lands where it is settled and to the necessary human resources;

(d) It calls for autonomy (or internal self-determination) of the kind and level the community needs in order to follow its own model in undertaking this historic project, with plans of its own, co-ordinated in its own way with those of society as a whole and without suffering ill-treatment imposed from outside.

85. In the daily work of the Ministry of Urban and Rural Development, it is essential to respect the ethnic identity, lifestyle and forms of internal organization of the indigenous communities and their special relationship with "mother earth", with the concept of their indigenous territory, and the communal forms of tenure of the land and the resources it contains.

86. It is necessary to support the processes of decision-making by indigenous communities and their members, their freedom to take independent decisions in accordance with their own cultural standards and the processes of self-management, self-government, endogenous development and autonomy (or free internal self-determination), in particular when they are participating in one way or another in development programmes and projects with other sectors of the population.

87. Any intervention by the village social promoter as provided for in the relevant texts, who must always be proposed and freely chosen by the communities themselves, should be designed to support their activities under genuine communal decisions, and should be integrated into genuine processes and projects for self-management and ethnic development by the indigenous communities in which he works and facilitate and help to guide action by the communities themselves, while at the same time proposing ways of encouraging their development so as to make them able to confront more effectively the actual circumstances they face.

88. In the forms of organization promoted by the Ministry of Development in the communities, the forms of community organization that have arisen historically within the indigenous communities themselves should be respected. It is essential always to proceed in such a way as not to destroy these existing forms of organization by promoting others within the indigenous communities. Otherwise there would be a danger of creating parallel institutions in place of those of the communities themselves, with the effect of alienating them and cutting them off, which could cause them incalculable harm.

89. The action taken should be governed by a recognition that the indigenous communities have their own procedures for discussing matters, reaching agreements and taking decisions. These procedures may be different from those of the Western type, which the authorities often impose from outside, believing them to be better. The Western world's system of voting is not the only one that can be used. Indigenous communities take decisions by processes of quiet informal contact and consultation, through which the feelings of the whole group are sounded out, leading to a general consensus in which nobody's interests are disregarded.

90. The action taken should also respect the ecological equilibrium that indigenous communities have been able to preserve over the centuries and should support the maintenance of a healthy environment. Care must be taken

not to cause damage by using agrochemicals or any other kind of harmful substances, nor to embark on activities that may have an adverse effect on the fauna, flora or general ecology by contaminating the soil or subsoil, the water or the air space.

2. Indigenous Communities Commission

91. With regard to legislation on the indigenous communities, it is recommended that consideration should be given to the possibility of including the following among the tasks to be carried out as soon as possible in this area.

92. Promoting amplification (modification or amendment) of the operative part of Congress Decree 59-88 of 12 October 1988, or the adoption of another legal text to supplement it, in such a way as to cover not just the children of persons who were refugees in other countries but also displaced persons inside the country, who at present are mentioned only in the preamble to the Decree.

93. Such persons encounter very similar problems because of late registration of births while they were displaced. They will not have the same nationality problems, but they will have problems with paying the fines, the stamp-duty required for registration and the certification charges, from which such legislation would exempt them.

94. Supporting the organization of conferences, workshops and seminars to discuss the suitability of the officially approved phonemes and alphabets and arrive at appropriate agreements to facilitate the application of those which are most suitable for these purposes so as to give them a basis in law.

95. Supporting, promoting and expediting adoption of the Establishment of the Academy of Mayan Languages of Guatemala Act to encourage recognition of and respect for the languages of Mayan origin in all relevant fields, thus making it possible for this important institution to discharge its functions and responsibilities to the full in this most necessary process.

96. Embarking as soon as possible on the preparation of a bill to develop the programme following from article 70 of the present Constitution of 1985, together with any other law which will give support to the indigenous communities in defending and promoting their cultures, traditions, customs, forms of social organization and languages and their special relationship with the land and forms of land tenure in accordance with their age-old traditions and in the light of the relevant constitutional provisions.

97. Supporting the communities' legitimate claims and doing more to meet their just requirements, wishes and preferences in their activities as members of Parliament and of the Indigenous Communities Commission of Congress of the Republic.

98. Making sure that these initiatives and activities are always in line with the wishes of the communities in question and that there is a genuine consultation process constantly under way and that due account is taken of their wishes at all times.

99. Similarly, every effort should always be made to ensure the drafting of texts that are in systematic harmony and accord with the United Nations provisions on human and indigenous rights.

3. Education

100. It is recommended that, when legislating on indigenous education, the education given to indigenous schoolchildren should be treated as bilingual and bicultural, in its underlying principles, in the means used in the educational process and in the actual content of the education, at least at the primary level. It should be aimed at all-round development of the pupil's personality through the fullest possible realization of his potential, at making him capable of meeting his fundamental needs and of overcoming the limitations that have for so long been imposed on indigenous peoples and communities. To that end, the pupil should be given the necessary knowledge of his fundamental rights within the context of the overall society he lives in, so that he can then defend them.

101. The expert Advisor considers that there is a solid basis for this in the current Constitution of the Republic of Guatemala.

102. The prime aim of education is regarded by the 1985 Constitution as being "full development of the human personality, knowledge of the life and culture of the nation and the world" (Constitution, art. 72, para. 1).

103. In the nature of things, the "national culture" in a society which recognizes that it is "made up of different ethnic groups, including indigenous groups of Mayan origin" cannot fail to include the culture or ethnic identity of these groups, in accordance with their values and characteristics, especially since the State is to "recognize, respect and promote their ways of life, customs, traditions and forms of social organization, the wearing of indigenous costume by men and women, their languages and dialects" (Constitution, art. 66).

104. Indigenous languages and dialects are listed among various cultural elements that the State shall "recognize, respect and promote", as stated at the end of article 66 of the present Constitution just quoted. The Constitution also states that "the vernacular languages are part of the nation's cultural heritage" (art. 143, second sentence). Those languages are not, however, mentioned explicitly in article 60, which refers to the "assets" that form part of the nation's cultural heritage, listing among them "the country's palaeontological, archaeological, historical and artistic assets". It specifies that they are all "under the protection of the State".

105. The idea that the way for people to overcome the factors limiting them is through knowledge and defence of their fundamental rights within the context of society as a whole finds a firm basis in the second paragraph of article 72 of the Constitution, which reads:

> "Education, instruction, social training and systematic teaching of the Constitution of the Republic and of human rights are declared to be of national importance."

106. At least in the case of the major ones, the Mayan languages must not be confined to the role of a medium or vehicle for arriving at Spanish. They should instead be used as languages of instruction at least from the pre-primary stage to the end of primary school. It has to be remembered that these are the mother tongues of hundreds of thousands of Guatemalans and part of Guatemala's cultural heritage.

107. It is likewise recommended, with regard to the bilingualism advocated by texts and by writers in the field of indigenous education, that:

(a) It should be explicitly stated as an essential condition that there should be full use of the indigenous languages and Spanish in the educational process, as regards both teaching the languages themselves and teaching through those languages. It should be borne in mind that full use of the indigenous languages is justified in the first instance by the simple fact that they are the mother tongues of large sectors of the Guatemalan population (who together form the majority). This fact is, moreover, recognized in the Constitution, when it proclaims them to be an integral part of Guatemala's cultural heritage, which does not mean that, within just, equitable and realistic limits, the necessary emphasis cannot be placed on Spanish as the official State language.

(b) The mother tongue inherited from the family and the surrounding society should in all cases be taught first, so that the pupil has a wide and accurate enough grasp of it before any attempt is made to give him formal teaching in another language.

(c) It should be specified that only when the above condition has been met is a start to be made on the formal teaching of any other language, although steps may be taken earlier to familiarize the pupil with the other language in which he will also receive instruction.

108. Only in this way would the pupil have a real chance of learning both languages - his mother tongue and the acquired language - to a high enough level in terms of correct use and functional mastery.

109. The conscious policy of basing Guatemalan nationality on two cultures and two languages, one indigenous and the other Spanish, should apply to all Guatemalans and not just to indigenous persons, as seems to be the case under the legislation now officially in force.

110. Thus, just as indigenous persons are expected to make themselves familiar with the Spanish language and culture, non-indigenous persons should also become familiar with the indigenous language and culture that predominate in their region of Guatemala. The aim is that everyone should be bilingual in Spanish and at least one of the country's more important indigenous languages and bicultural in the sense of being familiar with both the Spanish and the indigenous cultures of Guatemala.

111. It is desirable that both sectors, the indigenous and the non-indigenous, should also respect the right to be different enjoyed by the various sectors of Guatemalan society, which recognizes itself to be multi-ethnic, pluricultural and multilingual.

112. Educational programmes and material should therefore be developed which will give children a better preparation for life in this complex society on the basis of pluralist principles, eradicating misconceptions, false or distorted ideas and fixed prejudices held by one group about another. To that end, it is necessary to eliminate aggressive ethnocentrism in the interpretation of history and to promote wider relations between the existing ethnic, linguistic and cultural groups. Steps should also be taken to foster interethnic, interlinguistic and intercultural understanding, tolerance and friendship, while strengthening respect for the human rights and fundamental freedoms of all parties and for the historic and specific rights of the indigenous peoples and communities.

113. Article 76 of the Constitution should be interpreted as meaning that bilingual education is always to be preferred when there is a significant proportion of indigenous schoolchildren in a particular area (Mayan linguistic area) and that education for indigenous schoolchildren should be bilingual and bicultural, always in accordance with the provisions of the Constitution referred to above (arts. 58, 66, 72 and 143).

114. If it were decided that in other cases there was a right to choose that education in the community school should be either in a language of Mayan origin or in Spanish, it should at the same time be established that there was an obligation to:

(a) Inform the communities fully and clearly of the foreseeable consequences of linguistic insularity with abandonment of the official language, namely, doubtful acceptance by the State and loss of an important element of identity respectively.

(b) Create appropriate conditions and machinery in order to guarantee the genuineness of whatever decision may be taken and to ensure freedom of action, without violence, pressure, intimidation, explicit or implicit condemnation or incentives, rewards or recompenses of any kind, since they would all be unlawful or spurious.

115. It would be desirable to use terminology that is precise in the way it describes the phenomena it refers to, and accordingly that:

(a) The term "Mayan speaker" or "Mayan language(s) speaker" should be used for a person who speaks one or more languages of Mayan origin when it is not wished to refer specifically to the language(s) he speaks;

(b) The term "Mayan speaker who does not know Spanish" should be used to indicate the lack of knowledge of the Spanish language that these words describe so aptly;

(c) The term "acquired language" should be used to refer to a language other than the mother tongue which the person has learnt to speak (read and write), in preference to the expression "second language";

(d) The term "monolingual" should be kept exclusively for cases where it has been established that the person in question speaks only his mother tongue.

4. Culture

116. In the cultural field it would be a positive step to support the Academy of Mayan Languages more vigorously and promote reorganization of the National Indigenous Populations Institute and the Social Integration Seminar, so that they can discharge their respective functions fully within the context of the new constitutional provisions on recognition of and respect for the existence of indigenous communities in Guatemala and their fundamental rights.

117. In the light of the constitutional articles on culture and the indigenous communities, the State has adopted a pluralist policy on cultural matters. This policy is to be based on full recognition of the existence of the separate culture of indigenous peoples and communities within Guatemalan society as a whole. It is also to be applied in accordance with rules of conduct that respect the fundamental rights of these peoples and communities and the determination they have shown clearly and continuously for nearly 500 years to keep, develop and transmit their own separate culture to future generations.

118. It is essential in cultural matters to evolve procedures for preventing improper authoritarian behaviour, offensive attacks, violence, intimidation, coercion or material incentives, rewards and recompenses for exercising influence, encouraging certain kinds of behaviour or inducing cultural or religious changes. Use of any of these means leads direct towards something like ethnocide.

119. It is necessary for people to realize the destructive effects that unacceptable intervention of this kind has on indigenous societies. For this reason, steps should be taken immediately to create conditions to end practices involving interference in the internal organization and forms of land tenure of indigenous peoples and communities and a series of measures should be taken aimed clearly at making it possible in practice for these human groups to pursue the way of life they have freely chosen, while ensuring that they continue to live in harmony with other sectors of Guatemalan society.

120. National unity can be achieved more fully and profoundly through a diversity which respects the differences between existing groups claiming the right to a different way of life within society as a whole. Such unity will be more solid if it is rooted in diversity than if attempts are made to base it on a uniformity which does not correspond to the deeper feelings of the people.

121. Diversity is not in itself a denial of unity, nor does uniformity in itself necessarily produce the desired unity. On the contrary, there can be weakness in uniformity produced artificially and strength in diversity co-ordinated within a harmonious if multifaceted whole on the basis of respect for the specific nature of each of the components. In such diversity, each group would participate more fully, since it would do so on the basis of its own ideas, values and standards and not by making vain efforts to use means of expression that were alien to it.

122. Pluralism, self-management, self-government, autonomy and self-determination, within a policy of endogenous development, would do justice to the present claims and aspirations of the indigenous peoples and communities, which have for so long been subjected to interference and authoritarian treatment from outside.

123. This would not mean fostering or encouraging artificial differentiation or separatism where it did not exist. It would simply mean recognizing the multifarious reality of the societies of the State in which the indigenous peoples and communities live.

124. It is essential not to stand in the way of their full recovery of a historic awareness of their own existence and dignity as such or to hinder them from taking charge of their own destinies, in accordance with their own aspirations. They must have this chance, like any other people, if Guatemala is to avoid the friction and conflict that will inevitably result from lack of understanding and injustice.

125. It is necessary to recognize and guarantee equal rights for all the peoples and communities making up the country's population and the type and degree of autonomy that each of them claims for itself.

5. Health, medical services and pharmacology

126. Given the present situation with regard to the health of the indigenous peoples and communities and bearing in mind the individual socio-cultural context of each separate group, it will be necessary:

(a) To take the necessary action, in consultation with the indigenous communities, to encourage the development of effective health measures among the indigenous peoples, approaching the matter through a combination of traditional indigenous medical practices with those of modern medicine and through co-operation between traditional and scientific doctors in constant contact with each other, in order to provide these peoples with primary health services as fully and adequately as possible;

(b) To develop the necessary means of communication to meet health needs in remote areas;

(c) To create adequate health services in areas where indigenous people live;

(d) To ensure that health and other social services are more acccessible to these peoples and communities and meet their needs better;

(e) To improve health and medical services of a preventive, curative and rehabilitative nature and programmes relating to social security and social services, adapting them to the needs of the communities and groups concerned.

127. The competent authorities should clearly determine the socio-cultural and environmental factors hindering the provision of efficient health and social services for indigenous peoples and should make themselves more aware of the socio-cultural and environmental characteristics that can help to make such programmes and services a success so that they can turn them to good account.

128. In this context it seems necessary to:

(a) Intensify efforts with regard to the preliminary, initial and further training of indigenous persons as medical, paramedical, nursing and medical auxiliary staff within integrated programmes formulated, conducted and applied in active consultation and co-operation with the indigenous communities or groups concerned, and;

(b) Actively encourage the participation of the indigenous community in the administration and provision of the services.

129. Renewed recognition of the merits of traditional medicine and pharmacology would help to: (a) raise the general level of basic health, at the same time making it easier for the communities to revive their own culture, and (b) improve the quality and availability of medical services and encourage the use of medicines that have proved their value over centuries of use.

130. Special attention should be devoted to finding the best way of using traditional medicine and the people who practise it. Indigenous medical practices and pharmacology should be studied to determine what positive and useful aspects they have that can be combined with the positive and useful aspects of modern services and medicaments.

131. On this last point, there should be support and encouragement for the publication of the Phytotherapeutic Products Regulations, now in draft form, a copy of which was made available to the Advisor during his visit. This text is concerned with products prepared from plants which are therapeutic in form and use (phytotherapeutic products). It calls for botanical and toxological study, physico-organoleptic and microbiological analysis for public health purposes, identity, purity and quality controls (evaluation, verification and supervision) and registration of these products.

132. Laboratories producing these products and retail outlets ought to be licensed and subject to public health controls with regard to their installations and their operations in storing, packaging, manufacturing and/or retailing the various products they are concerned with - provision for which is made in the draft regulations.

6. Proposals submitted by the participants in the working meetings held with the Advisor

133. After these proposals had been sent to the Centre for the attention of the Secretary-General of the United Nations, the Advisor's report was transmitted to the Government of Guatemala, together with the proposal that working groups on indigenous affairs should be set up in every ministry represented in the Cabinet to contribute to the investigation, planning, programming, assessment and execution of the various government actions that might affect the country's indigenous communities. These working groups should be multidisciplinary and include genuine and authentic representatives of the indigenous peoples who can bring to those efforts their age-old knowledge and wisdom.

134. It should be added that such indigenous representatives would be freely selected by the communities themselves according to their own procedures and criteria and that they would have powers of initiative, discussion and decision at least equal to those of the other members of the working groups, with broad possibilities of consulting their grass-roots communities, whenever they considered it necessary or useful.

135. The said proposals also asked the World Health Organization (WHO):

(a) To help set up an international section of a documentation bank to be established in the General Directorate of Health, Ministry of Public Health and Social Assistance, on the subject of traditional medicine and pharmacology, by contributing its own publications and documents and any others it may have available on the subject; and

(b) To arrange the visit to Guatemala of a WHO expert on traditional medicine and pharmacology for the purpose of supplying information on and publicizing the work done by the Organization in that area.

136. They also asked for help from the Centre for Human Rights, within the framework of the Advisory Services, in:

(a) Organizing an international seminar of Latin American regional scope on the subject of "The use of traditional medicine and pharmacology in the context of supplying primary health services", with the participation of indigenous and non-indigenous experts from the region and the attendance of experts from other parts of the world, arrangements being made to supply documents containing practical information based on actual experience of the subject of the seminar. In this connection, the co-operation of the World Health Organization and the Pan American Health Organization might be secured;

(b) Holding a seminar on "The present and future situation of the Academy of Mayan Languages of Guatemala" and transmitting the request to UNESCO and ILO, to which organizations it was also addressed, in the hope that they might be able to take action in that respect within the framework of interagency co-operation;

(c) Organizing fellowship programmes, interchanges of experience, training courses and advisory programmes on the fundamental rights of indigenous peoples and communities; and

(d) Setting up, in the Ministry of Urban and Rural Development, a document bank on the subject of the human rights and fundamental freedoms of indigenous peoples and communities, through the contribution of documentation published by the United Nations and other relevant documentation available to the Secretary-General.

7. The Advisor's final reflections on indigenous communities

137. The indigenous peoples and communities of the Americas, including those of Guatemala, have passed through wars of aggression to the state of societies which are extremely down-trodden as a result of domination, discrimination, exploitation, oppression and repression for nearly 500 years.

138. After centuries of such maltreatment, of discrimination and socio-cultural intolerance, of submission and political manipulation, there is now the possibility in Guatemala, in the light of the new constitutional provisions, that the public authorities and the various power groups existing in the country might adopt policies of respect, justice and equity towards those peoples and communities.

139. In the Advisor's view, the positive actions that are being attempted or currently being carried out in Guatemala, particularly with regard to education, the Mayan languages and health, together with the participants' proposals which have just been examined in this report and the proposals and recommendations put forward in the report itself in an endeavour to bring such actions more into line with the principles and standards prevailing internationally in the precise and specific areas assigned to the expert Advisor for examination during the visit, would help to create a favourable atmosphere for improved observance of the human rights of the indigenous peoples and for some acknowledgement of the historic and specific rights of the indigenous peoples and communities of Guatemala.

140. In this regard, such measures constitute initial steps only but they are nevertheless important steps whereby the authorities and various power groups within the State - in deference to the provisions of the Constitution - move more steadily towards policies of economic, social and cultural pluralism. It would then also be possible to introduce more significant forms of political pluralism than the mere pluralism of political parties.

141. However, such positive steps based on the provisions of the Constitution or planned by the Constituent Assembly of 1985 would be of little use if, at the same time, there is a continuation of the kinds of violence which threaten lives and physical integrity and jeopardize many other human rights and fundamental freedoms in the areas traditionally occupied by these peoples and communities. Still less so if, in paralell, patterns of organization and behaviour based on alien criteria are introduced from outside which upset the types of action and internal organization generated by history in those peoples and communities. This would deny their right to their life-style, to their special relationship with mother earth and with their ancestral territories and their traditional methods of communal landholding. This would be in flat contradiction to the criteria and principles put forward in the Constitution and could hardly be reconciled with respecting the right "of communities to their cultural identity, in keeping with their values, language and customs", as established by article 58, or with the recognition, respect and protection accorded, inter alia, to "their forms of life, customs, traditions, forms of social organization ..." as established in article 66.

142. He emphasizes as an essential and irreplaceable element that there must be direct and full participation of genuine and authentic representatives, freely chosen by the indigenous peoples and communities according to their own criteria and procedures, in everything that affects their destiny including, of course, the actions suggested in the next three paragraphs.

143. It is imperative therefore to seek out earnestly and resolutely ways of overcoming the existing obstacles and creating the conditions needed to guarantee the lives and physical integrity of these peoples and communities and the other human rights and fundamental freedoms of their members and ensuring respect for their ethnic identity, customs, traditions, ways of life and internal social organization, as required by the Constitution.

144. Above all, it is both imperative and urgent that the present public authorities and all current social and political sectors in the country should tackle the pressing and vital task of creating a favourable atmosphere and

securing the necessary agreements and arrangements for terminating the campaign of open repression that has been waged for a number of years by various power groups, both official and unofficial, against these peoples and communities and should redouble their efforts to lay the foundations for the changes in society in general which will render possible and encourage the elimination of the phenomena of general discrimination, economic exploitation and ethnic oppression which, in Guatemala as in other countries, have been plaguing these peoples, communities and persons for several centuries.

145. On the contrary, policies are needed which favour the self-management, ethnic development, autonomy, (internal self-determination) of these peoples and communities and mutually respected pluralism in the economic, social, cultural and political spheres.

146. Only in that way would the measures considered in this report, though as initial steps only, fit completely into the framework of what was specified and programmed by the National Constituent Assembly in 1985 and the principles and standards prevailing internationally on these subjects and thus take on a genuine significance.

147. The international community would undoubtedly be ready to co-operate and render assistance, if so requested, to launch activities of such vital importance for the future of the indigenous peoples and communities of Guatemala, by putting forward practical proposals and initiatives and collaborating with the Guatemalan authorities to that end.

VI. ADVISORY COMMISSION ON HUMAN RIGHTS MATTERS TO THE OFFICE OF THE PRESIDENT (COPADEH)

148. The international Advisors supplied by the Centre for Human Rights have been in contact with the Commission and have counselled it on specific matters such as "enforced or involuntary disappearances" or "indigenous communities". The conclusions and recommendations they have submitted in their reports and which have been reproduced in this document appear, however, under the State organ which made greatest use of the services of these Advisors, despite the fact that there are specific references to the Advisory Commission to the Office of the President.

149. It should be pointed out also that books and documents were supplied to the Advisory Commission for the establishment of a basic human rights reference library.

VII. MINISTRY OF FOREIGN AFFAIRS

A. Study fellowships

150. During the forty-fifth session of the United Nations Commission on Human Rights, two officials of the Ministry of Foreign Affairs responsible for human rights matters were granted fellowships to enable them to familiarize themselves with the work of the main human rights organs of the United Nations and the protection mechanisms. The two Guatemalan officials, Miss Araceli Phefunchal, and Mr. Juan Carlos Cuestas Galvez, also had the

opportunity to study the working of the Centre for Human Rights, the Human Rights Committee, and various international organizations (ILO, UNHCR, ICRC, etc.). The main purpose of these fellowships was to train the officials of the Ministry and give them a better knowledge of the work being done at the international level, so that better co-ordination could be secured between the Centre and the Guatemalan authorities.

B. Supply of books

151. The Ministry has also been supplied with books and documents for a basic human rights reference library.

VIII. HUMAN RIGHTS TRAINING COURSES UNDER THE UNITED NATIONS TECHNICAL ASSISTANCE PROGRAMME

152. Under the United Nations technical assistance programme, two national human rights training courses have been held. The courses catered for judges, magistrates, civil servants, police officials and officers of the armed forces, members of parliament, teachers, officials of the Office of the Procurator for Human Rights, members of the Human Rights Commission of Congress and of the Advisory Commission on Human Rights Matters to the Office of the President and representatives of non-governmental organizations. The first course was held at Guatemala City from 14 to 18 November 1989 with the participation of some 60 people. The second course, which was a follow-up to the first, was held in the city of Antigua from 23 to 27 October 1989, with the same participation.

153. At the second course, there were four main themes around which all the activities of the course revolved and which had as their goal the spreading of awareness of and teaching human rights in the following areas:

(a) At the primary, secondary and university education levels, and through social communication media;

(b) To the officers of the armed forces, emphasizing the relationship between international humanitarian law and human rights;

(c) To police officials and prison officials; and

(d) To judges responsible for the administration of justice, emphasizing the application of international human rights standards in the domestic law of Guatemala.

154. Among the experts, international specialists in human rights, were: Mr. Hector Gros Espiell, President of the Inter-American Court of Human Rights and Expert on Guatemala of the United Nations Commission on Human Rights; Mr. Eduardo Jiménez de Aréchaga, former President of the International Court of Justice at The Hague; Mr. Manuel Núñez Pedraza, a senior official of State Security of the Spanish Police; Mr. Jean-Pierre Givel, representative of the International Committee of the Red Cross, and Mr. Marco Antonio Sagastume Gemmell, Advisor on Teaching Methods.

155. Each of the themes mentioned above formed the subject of a debate in round tables each made up of senior Guatemalan office-holders from the judiciary, the legislature and the executive as well as persons from the university world and institutions for the defence of human rights. There was a discussion of what was being done in each of the fields in question and what ought to be done in Guatemala.

156. The participants broke up into multidisciplinary groups which worked on each of the themes of the course preparing conclusions and recommendations to the Guatemalan authorities that could form the foundations for a co-ordinated action to spread awareness of and teach human rights. Some of the recommendations elaborated by the various groups are given below.

Group I - Spreading awareness of and teaching human rights at the primary, secondary and university education levels and through social communication media

(a) A National Committee should be set up, co-ordinated by the Procurator for Human Rights, which would bring together representatives of the various institutions and of non-governmental organizations interested in promoting human rights;

(b) The Ministry of Public Education should hold courses and carry out other educational activities concerning human rights and ways of teaching them at the various levels and in the various languages of the national educational system;

(c) It should be borne in mind, in a policy of promoting human rights, that non-formal education is also a vehicle for the transmission of human rights values and standards;

(d) A knowledge of human rights should be disseminated to the various ethnic groups in their own languages;

(e) The universities should be asked to include the subject of human rights and their implications in the curricula for the various professional courses;

(f) The Ministry of National Defence should set up machinery to spread awareness of human rights within its jurisdiction;

(g) Courses on human rights should be given in the military training centres;

(h) A centre of human rights documentation should be established within the Office of the Procurator for Human Rights. It would contain all the publications and documentation supplied by the Centre for Human Rights of the United Nations under the technical co-operation programme. This centre would be open to the public and would also serve as a depositary library for other United Nations publications. It should preferably be located in the city centre;

(i) There should be programmes to train social communicators and journalists in the need to promote the teaching of human rights and specific techniques therefor; and

(j) The Government of Guatemala should edit, publish and disseminate the papers, conclusions and recommendations of the seminar. The local United Nations Advisor, Mr. Sagastume Gemmell, should be responsible for editing and co-ordinating the said publication.

Group II - Spreading awareness of and teaching human rights to police officials

(a) A committee should be set up in the Ministry of the Interior representing all the departments involved, its basic purpose being to co-ordinate actions to spread awareness of and teach human rights to members of the police force and prison officials;

(b) A handbook of national and international legal instruments protecting human rights should be printed and supplied to all police and prison officials. More especially, it should contain the Code of Conduct for Law Enforcement Officials and the Standard Minimum Rules for the Treatment of Prisoners, both of which had been adopted by the United Nations General Assembly;

(c) A simple handbook of basic rules, for the behaviour of policemen and prison officials should be prepared, published and distributed;

(d) Some kind of incentive should be established for policemen and prison officials who collaborate in spreading awareness of and teaching human rights or distinguish themselves in the defence of human rights;

(e) The activities of the Ministry of the Interior, the Supreme Court of Justice, the Ministry of Defence and the Procurator for Human Rights should be co-ordinated so as to establish criteria for the teaching of human rights to police and prison staff; and

(f) Advantage should be taken of the knowledge of and experience of the persons who attended the Second Human Rights Training Course.

Group III - Incorporation of international human rights standards in Guatemalan domestic law

(a) The international treaties, conventions and covenants relating to human rights that Guatemala has accepted and ratified should be collected and circulated to State organs, officers of the judiciary, professional colleges, universities and libraries throughout the nation;

(b) The reservation on article 80 of the OAS Inter-American Convention to Prevent and Punish Torture, should be lifted, since if that were not done the aims of the Convention would be nullified;

(c) Immediate ratification of the International Covenant on Civil and Political Rights and the Optional Protocol thereto, because their contents were already included in the American Convention on Human Rights, to which Guatemala is a State Party;

(d) The Human Rights Commission of Congress should carry out a study of all international treaties, conventions and covenants on human rights to which Guatemala is not yet a party with a view to ratifying them, incorporating them and applying them in Guatemalan domestic law;

(e) The Human Rights Commission of Congress should explore or identify machinery for co-ordination with the other existing commissions on the subject, establishing a department responsible for circulating in a specific form reports of violations and the work being done by each commission so as to keep the general public and the international community informed. For example, the various functions of the Office of the Procurator, of the Commission of Congress - whose function is to legislate, and that of COPADEH - whose function is purely advisory, should be clearly delimited.

Group IV - Spreading awareness of and teaching humanitarian international law and human rights to the officers of the armed forces

A programme for the teaching, promulgation and practising of international law, of human rights and of international humanitarian law should be carried out involving the members of the armed forces at all levels.